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2 Christopher Tuttle, State Bar No. 264545
3 THE CHANLER GROUP
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9 Attorneys for Plaintiff
10 WHITNEY R. LEEMAN, PH.D.

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

WHITNEY R. LEEMAN, PH.D.

Plaintiff,

v.

PLEWS, INC., *et al.*,

Defendant.

Case No. CGC 16-550328

[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 Dr. Whitney R. Leeman (“Leeman”)
4 and Plews, Inc. (“Plews”), with Leeman and Plews each individually referred to as a “Party” and
5 collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

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

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are tools vinyl/PVC grips containing DEHP
22 that are manufactured, imported, sold, or distributed for sale in California by Plews including, but not
23 limited to, the *Plews LubriMatic Swivel Handled Filter Wrench, #70-539, UPC #0 28893 70539 0*,
24 hereinafter the “Products.”

25 **1.6 Notices of Violation**

26 On November 10, 2015, Leeman served Plews and the requisite public enforcement agencies
27 with a “60-Day Notice of Violation” (“Notice”) alleging that Plews violated Proposition 65 by failing
28 to warn its customers and consumers in California of the health hazards associated with exposures to

1 DEHP from the Products. To the best of the Parties' knowledge, no public enforcer has commenced
2 and is diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On February 9, 2016, Leeman filed the instant action ("Complaint"), naming Plews as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

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

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
23 the Court approves this the Consent Judgment, including any unopposed tentative rulings.

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1 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNING**

2 **2.1 Reformulation Standards**

3 Commencing on the Effective Date, Plews shall not manufacture, import, distribute, sell or
4 offer the Products for sale in California unless they are Reformulated Products, or contain appropriate
5 health hazard warnings, per Section 2.2. For purposes of this Consent Judgment, “Reformulated
6 Products” are products that contain DEHP in concentrations of less than 0.1 percent (1,000 parts per
7 million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies
8 3580A and 8270C, or any other methodology utilized by federal or state agencies for the purpose of
9 determining the DEHP content in a solid substance.

10 **2.2 Product Warnings**

11 Commencing within five (5) business days of the Effective Date, Plews shall provide clear
12 and reasonable warnings for all Products as set forth in subsections 2.2(a) and (b) for all Products that
13 do not currently have warnings and that do not qualify as Reformulated Products. Each warning shall
14 be prominently placed with such conspicuousness as compared with other words, statements, designs,
15 or devices as to render it likely to be read and understood by an ordinary individual under customary
16 conditions before purchase or use. Each warning shall be provided in a manner such that the
17 consumer or user understands to which *specific* Product the warning applies, so as to minimize the
18 risk of consumer confusion.

19 **(a) Retail Store Sales.**

20 **(i) Product Labeling.** Plews shall affix a warning to the packaging, labeling, or
21 directly on each Product provided for sale in retail outlets in California that states:

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

24 Or,

25 **WARNING:** This product contains a chemical
26 known to the State of California to cause cancer
 and birth defects and other reproductive harm.

27 **(ii) Point-of-Sale Warnings.** Alternatively, Plews may provide warning signs in
28 the form below to its customers in California with instructions to post the warnings in close proximity

1 **3.1.2 Final Civil Penalty**

2 On or before February 15, 2017, Plews shall make a final civil penalty payment of
3 \$5,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Leeman agrees that the
4 final civil penalty payment shall be waived in its entirety if, no later than February 1, 2017, an officer
5 of Plews provides Leeman with written certification that all of the Products it is selling or distributing
6 for sale in California as of the date of such certification are Reformulated Products as defined by
7 Section 2.1, and that Plews will continue to offer only Reformulated Products for sale in California in
8 the future. The option to certify reformulation in lieu of making the final civil penalty payment
9 required by this Section is a material term and time is of the essence. Plews shall deliver its
10 certificate, if any, to Leeman’s counsel at the address provided in Section 3.4, below. In the event
11 that Plews does not timely certify its compliance or make the final civil penalty payment required by
12 this Section, the Parties agree that Leeman may file a motion or application seeking an order
13 compelling Plews’s compliance with this Section. If successful, the Parties further agree that
14 Leeman shall be entitled to his reasonable attorneys’ fees and costs pursuant to general contract
15 principles and Code of Civil Procedure section 1021.5.

16 **3.2 Reimbursement of Attorney’s Fees and Costs**

17 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
19 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
20 other settlement terms had been finalized, Plews expressed a desire to resolve Leeman’s fees and
21 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman
22 and her counsel under general contract principles and the private attorney general doctrine codified at
23 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
24 execution of this Consent Judgment. Plews shall issue a check to “The Chanler Group” in the
25 amount of \$30,000, pursuant to the payment procedures in Section 3.3 below, and to the address
26 found in Section 3.4 below.

1 **3.3 Payments Held in Trust**

2 Except the final civil penalty payment required by Section 3.1.2, all payments due under this
3 agreement shall be delivered within five (5) days of the date that this Consent Judgment is fully
4 executed by the Parties, and held in trust by Plews’ counsel until the Court grants the motion for
5 approval of this Consent Judgment. Within two business days of the Court’s approval of this
6 Consent Judgment, Plews’ counsel shall tender the initial civil penalty payments and attorneys’ fee
7 and costs reimbursements required by Sections 3.1.1 and 3.2.

8 **3.4 Payment Address**

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

10 The Chanler Group
11 Attn: Proposition 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710

13 **4. CLAIMS COVERED AND RELEASED**

14 **4.1 Leeman’s Public Release of Proposition 65 Claims**

15 Leeman, acting on her own behalf and in the public interest, releases Plews and its parents,
16 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
17 attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
18 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
19 franchisers, resellers, cooperative members, licensors and licensees (“Downstream Releasees”) for
20 any violations arising under Proposition 65 for unwarned exposures to DEHP from Products sold by
21 Plews prior to the Effective Date, as set forth in the Notice.

22 **4.2 Leeman’s Individual Release of Claims**

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

1 **4.3 Plews’s Release of Leeman**

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

7 **4.4 Mutual Waiver of California Civil Code Section 1542**

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

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

14 The Parties, each on his/its own behalf, and on behalf of his/its past and current agents,
15 representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and all
16 rights and benefits which they may have under, or which may be conferred upon them by the
17 provisions of Civil Code section 1542 as well as under any other state or federal statute or common
18 law principle of similar effect, to the fullest extent he/it may lawfully waive such rights or benefits
19 pertaining to the released matters, as specifically defined by Sections 4.1 through 4.3, above.

20 **4.5 Representations**

21 Plews represents that the sales data for the Products and other information it provided to
22 Leeman is truthful to the best of its knowledge and a material factor upon which Leeman has relied to
23 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this
24 Settlement Agreement. If, within twelve months of the Effective Date, Leeman discovers and
25 presents to Plews, evidence demonstrating that the preceding representation was materially
26 inaccurate, then Plews shall have 30 days to meet and confer regarding Leeman’s contention. Should
27 this 30-day period pass without any such resolution between Leeman and Plews, Leeman shall be
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1 entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of
2 contract.

3 **5. COURT APPROVAL**

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

7 **6. SEVERABILITY**

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

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the state of California
13 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
14 rendered inapplicable by reason of law generally, or as to the Products, then Plews may provide
15 written notice to Leeman of any asserted change in the law, and shall have no further injunctive
16 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
17 so affected. If a future revision to Title 27, California Code of Regulations section 25601 et seq.,
18 relating to the content and/or method of transmission of safe harbor warnings for exposures to
19 Proposition 65-listed chemicals from consumer products is adopted, then Plews may use the revised,
20 adopted warning content and/or method of transmission forth in the revised regulations to warn
21 consumers and other individuals in California about the harms associated with exposures to DEHP
22 from the Products.

23 **8. NOTICE**

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

Brett Mueller, President
Plews, Inc.
1550 Franklin Grove Road
Dixon, IL 61021

Stephen T. Holzer, Esq.
Lewitt Hackman et al
1663 Ventura Blvd. 11th Floor
Encino, CA 91436

For Leeman:

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

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

9. COUNTERPARTS; FACSIMILE SIGNATURES

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

10. POST EXECUTION ACTIVITIES

Leeman agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance of obtaining such approval, Leeman and Plews agree to mutually employ their best efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely 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.

11. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any Party, and the entry of a modified consent judgment thereon 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 acknowledge that they have read, understood, and agree to all of the terms and conditions contained herein.

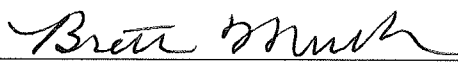
AGREED TO:

AGREED TO:

Date: _____

Date: 9-22-2016

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

By: 
Bret Mueller, President
PLEWS, INC.

1 **12. AUTHORIZATION**

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

5 **AGREED TO:**

AGREED TO:

6 9/22/16

7 Date: _____

Date: _____

8 *Whitney Leeman*
9 By: _____

10 WHITNEY R. LEEMAN, PH.D.

11 By: _____
12 Bret Mueller, President
13 PLEWS, INC.
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