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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MARIN
12 UNLIMITED CIVIL JURISDICTION
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16 WHITNEY R. LEEMAN, PH.D.,

17 Plaintiff,

18 v.

19 UNITERS NORTH AMERICA, LLC; *et al.*,

20 Defendants.

Case No. CIV1600639

[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 Uniter North America, LLC (“Uniter”), with Leeman and Uniter each
5 individually referred to as a “Party” and 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 improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Uniter employs ten or more persons 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 Uniter manufactures, imports, sells, or distributes for sale in California,
16 vinyl/PVC bags containing di(2-ethylhexyl)phthalate (“DEHP”), without first providing the exposure
17 warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known
18 to the State of California to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 Uniter’s products that are covered by this Consent Judgment are defined as vinyl/PVC bags
21 containing DEHP including, without limitation, the *Uniter Pure Home Care Essentials, UPC #6*
22 *48951 04675 5*, which are manufactured, imported, distributed, sold and/or offered for sale by
23 Uniter in the State of California, hereinafter the “Product[s].”

24 **1.6 Notice of Violation**

25 On September 15, 2015, Leeman served Uniter and certain requisite public enforcement
26 agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Uniter violated Proposition 65
27
28

1 when they failed to warn their customers and consumers in California that vinyl/PVC bags expose
2 users to DEHP.

3 **1.7 Complaint**

4 On or about February 19, 2016, Leeman filed the instant action (“Complaint”), naming
5 Uniters as defendant for its alleged violations of Health and Safety Code section 25249.6 that are the
6 subject of the Notice.

7 **1.8 No Admission**

8 Uniters denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintain that all of the products that they have 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 Uniter’s 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 Uniters as to the allegations in the Complaint, that venue is proper in the County of
19 Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
20 Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the date that this
23 Consent Judgment is approved by the Court, including any unopposed tentative rulings.

24 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date, and continuing thereafter, Uniters shall only purchase for
27 sale, manufacture for sale, import, sell, or distribute for sale in California “Reformulated Products,”
28

1 or Products that are sold with a clear and reasonable warning pursuant to Section 2.2 below. For
2 purposes of this Consent Judgment, “Reformulated Products” are products that contain DEHP in
3 concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.
4 Environmental Protection Agency testing methodologies 3580A and 8270C, or any other
5 methodology utilized by federal or state agencies for the purpose of determining the DEHP content in
6 a solid substance.

7 **2.2 Product Warnings**

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

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

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

19 **WARNING:** This product contains DEHP, a chemical known
20 to the State of California to cause birth defects and
other reproductive harms.

21 **(ii) Point-of-Sale Warnings.** Alternatively, Uniteres may provide warning signs in
22 the form below to its customers in California with instructions to post the warnings in close proximity
23 to the point of display of the Products. Such instruction sent to Uniteres customers shall be sent by
24 certified mail, return receipt requested.

25 **WARNING:** This product contains DEHP, a chemical known
26 to the State of California to cause birth defects
27 and other reproductive harms.
28

1 Where more than one Product is sold in proximity to other like items or to those that do not
2 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement
3 shall be used:¹

4 **WARNING:** The following products contain DEHP, a chemical known
5 to the State of California to cause birth defects and other
6 reproductive harms:

7 [*list products for which warning is required*]

8 **(b) Mail Order Catalog and Internet Sales.** In the event that Uniter sells Products via
9 mail order catalog and/or the internet, to customers located in California, after the Effective Date, that
10 are not Reformulated Products, Uniter shall provide warnings for such Products sold via mail order
11 catalog or the internet to California residents. Warnings given in the mail order catalog or on the
12 internet shall identify the *specific* Product to which the warning applies as further specified in
13 Sections 2.2(b)(i) and (ii).

14 **(i) Mail Order Catalog Warning.** Any warning provided in a mail order catalog
15 shall be in the same type size or larger than the Product description text within the catalog. The
16 following warning shall be provided on the same page and in the same location as the display and/or
17 description of the Product:

18 **WARNING:** This product contains DEHP, a chemical known
19 to the State of California to cause birth defects and
20 other reproductive harms.

21 Where it is impracticable to provide the warning on the same page and in the same location as
22 the display and/or description of the Product, Uniter may utilize a designated symbol to cross
23 reference the applicable warning and shall define the term “designated symbol” with the following
24

25 _____
26
27 ¹For purposes of the Settlement Agreement, “sold in proximity” shall mean that the Product and another similar product
28 are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 language on the inside of the front cover of the catalog or on the same page as any order form for the
2 Product(s):

3
4 **WARNING:** Certain products identified with this symbol ▼
5 and offered for sale in this catalog contain DEHP,
6 a chemical known to the State of California to
7 cause birth defects and other reproductive harms.

8 The designated symbol must appear on the same page and in close proximity to the display
9 and/or description of the Product. On each page where the designated symbol appears, Uniter must
10 provide a header or footer directing the consumer to the warning language and definition of the
11 designated symbol.

12 **(ii) Internet Website Warning.** A warning shall be given in conjunction with the
13 sale of the Products via the internet, which warning shall appear either: (a) on the same web page on
14 which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the
15 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
16 during the checkout process. The following warning statement shall be used and shall appear in any
17 of the above instances adjacent to or immediately following the display, description, or price of the
18 Product for which it is given in the same type size or larger than the Product description text:

19 **WARNING:** This product contains DEHP, a chemical known
20 to the State of California to cause birth defects
21 and other reproductive harms.

22 Alternatively, the designated symbol may appear adjacent to or immediately following the
23 display, description, or price of the Product for which a warning is being given, provided that the
24 following warning statement also appears elsewhere on the same web page, as follows:

25 **WARNING:** This product contains DEHP, a chemical known
26 to the State of California to cause birth defects and
27 other reproductive harms.
28

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty Payments**

3 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
4 to in this Consent Judgment, Uniters shall pay \$16,500 in civil penalties. Each civil penalty payment
5 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-
6 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
7 Assessment (“OEHHA”) and twenty-five percent (25%) of the funds allocated to Leeman.

8 **3.1.1 Initial Civil Penalty**

9 Within ten (10) days of the mutual execution of this Consent Judgement, Uniters shall
10 issue a check for its initial civil penalty payment in the amount of \$4,500 to “Adams, Nye, Becht
11 LLP, c/o Barbara R. Adams, Esq.” Adams, Nye, Becht LLP shall provide The Chanler Group with
12 written confirmation within five days of receipt that the funds have been deposited in a trust account.
13 Within five (5) days of the date the Court approves this Consent Judgment, including any unopposed
14 tentative rulings, Adams, Nye, Becht LLP shall issue a check for the initial civil penalty payment to
15 “Whitney R. Leeman, Ph.D., Client Trust Account.” Leeman subsequently will direct 75% of the
16 initial civil penalty to OEHHA.

17 **3.1.2 Final Civil Penalty**

18 On or before November 30, 2016, Uniters shall make a final civil penalty payment of
19 \$12,000. Leeman agrees that the final civil penalty payment shall be waived in its entirety if, no later
20 than November 15, 2016, an officer of Uniters provides Leeman with written certification that it is no
21 longer offering or distributing for sale in California the Products, or is only offering for sale and
22 distributing for sale in California, Reformulated Products as defined in section 2.1, above. The
23 option to certify reformulation in lieu of making the final civil penalty payment required by this
24 Section is a material term and time is of the essence.

25 **3.2 Reimbursement of 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

1 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
2 other settlement terms had been finalized, Uniter expressed a desire to resolve Leeman's fees and
3 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman's
4 and her counsel under general contract principles and the private attorney general doctrine codified at
5 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
6 execution of this Consent Judgment. Uniter shall, within ten (10) days of the mutual execution of
7 this Consent Judgment, issue a check payable to "Adams, Nye, Becht LLP, c/o Barbara R. Adams" in
8 the amount of fees and costs of \$31,100 to be held in trust by Adams, Nye, Becht LLP for The
9 Chanler Group. Adams, Nye, Becht LLP shall provide The Chanler Group with written confirmation
10 within five days of receipt that the funds have been deposited in a trust account. Within five (5) days
11 of the date the Court approves this Consent Judgment, including any unopposed tentative rulings,
12 Adams, Nye, Becht LLP shall issue a check payable to "The Chanler Group" to the address found in
13 Section 3.3.1 below.

14 **3.3 Payment Procedures**

15 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
16 this Consent Judgment are to be delivered within ten (10) days of the mutual execution of this
17 Consent Judgment, to Adams, Nye, Becht LLP, and released to The Chanler Group and Leeman
18 within five (5) days of the date the Court approves this Consent Judgment, including any unopposed
19 tentative rulings, according to the following subsections.

20 **3.3.1 Payment Address**

21 All payments and tax documentation for OEHHA, Leeman, and her counsel shall be
22 delivered to:

23 The Chanler Group
24 Attn: Proposition 65 Controller
25 2560 Ninth Street
26 Parker Plaza, Suite 214
27 Berkeley, CA 94710
28

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Leeman’s Public Release of Proposition 65 Claims**

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

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

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

17 **4.3 Uniter’s Release of Leeman**

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

23 **5. COURT APPROVAL**

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

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

5 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the state of California
7 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
8 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Uniteres may
9 provide written notice to Leeman of any asserted change in the law, and shall have no further
10 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
11 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Uniteres from any
12 obligation to comply with any pertinent state or federal toxics control laws.

13 **8. NOTICE**

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

17 For Uniteres:

18 Barbara R. Adams, Esq.
19 Adams, Nye, Becht, LLP
20 222 Kearny Street, 7th Floor
San Francisco, California 94108

21 For Leeman:

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

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

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **10. POST EXECUTION ACTIVITIES**

6 Leeman agrees to comply with the reporting form requirements referenced in Health and
7 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
8 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
9 furtherance of obtaining such approval, Leeman and Uniters agree to mutually employ their best
10 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain
11 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
12 shall include, at a minimum, cooperating with the drafting and filing of the necessary moving papers,
13 and supporting the motion for judicial approval.

14 **11. MODIFICATION**

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

18 **12. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment and have read, understood,
20 and agree to all of the terms and conditions contained herein.

21 **AGREED TO:**

AGREED TO:

22
23 Date: 3/24/16

Date: _____

24 By: *Whitney Leeman*

25 By: _____

26 WHITNEY R. LEEMAN, PH.D.

27 Mickey Gechele, President
28 Uniters North America, LLC

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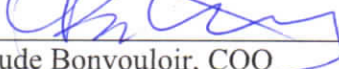
20 **AGREED TO:**

21
22 Date: _____

23
24 By: _____
25 WHITNEY R. LEEMAN, PH.D.

20 **AGREED TO:**

21
22 Date: 3/24/2016

23
24 By:  _____
25 Claude Bonvouloir, COO
26 Uniteres North America, LLC