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10 DR. WHITNEY R. LEEMAN

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF ALAMEDA
13 UNLIMITED CIVIL JURISDICTION

14 DR. WHITNEY R. LEEMAN,)

Case No. RG14720236

15 Plaintiff,)

[PROPOSED] CONSENT JUDGMENT

16 v.)

17 Y M F CARPETS, INC.; and DOES 1-150,)
18 inclusive,)

Action Filed: April 4, 2014

19 Defendants.)
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1 **1. INTRODUCTION**

2 **1.1 Dr. Whitney R. Leeman and Y M F Carpets, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Dr. Whitney R. Leeman
4 ("Leeman" or "Plaintiff") and defendant Y M F Carpets, Inc. ("YMF" or "Defendant"), with
5 Plaintiff and Defendant collectively referred to as the "parties."

6 **1.2 Dr. Whitney R. Leeman**

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

10 **1.3 Y M F Carpets, Inc.**

11 Leeman alleges that YMF employs ten or more persons and is a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.6, *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 Leeman alleges that YMF has manufactured, imported, distributed and/or sold in the State of
16 California ottomans with vinyl/PVC upholstery containing di(2-ethylhexyl)phthalate ("DEHP").
17 DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause
18 birth defects and other reproductive harm.

19 **1.5 Product Description**

20 The products that are covered by this Consent Judgment are defined as ottomans with
21 vinyl/PVC upholstery containing DEHP including, but not limited to, *Simply Essential Ottoman*,
22 SKU #893916, UPC #6 46760 01243 5, which are manufactured, imported, distributed, sold and/or
23 offered for sale by YMF in the State of California, hereinafter the "Products."

24 **1.6 Notice of Violation**

25 On December 13, 2013, Leeman served YMF and various public enforcement agencies with
26 a document entitled "60-Day Notice of Violation" ("Notice") that provided the recipients with
27 notice that YMF was in violation of California Health & Safety Code § 25249.6 for failing to warn
28 consumers that its ottomans with vinyl/PVC upholstery exposed users in California to DEHP.

1 **1.7 Complaint**

2 On April 4, 2014, Leeman filed a complaint in the Superior Court in and for the County of
3 Alameda against YMF and Does 1 through 150, *Leeman v. Y M F Carpets, Inc., et al.*, Case No.
4 RG14720236 (the “Action”), alleging violations of California Health & Safety Code § 25249.6,
5 based on the alleged exposures to DEHP contained in certain ottomans with vinyl/PVC upholstery
6 sold by YMF in the State of California.

7 **1.8 No Admission**

8 YMF denies the material, factual and legal allegations contained in Leeman’s Notice and
9 Complaint and maintains that all products that it has sold, manufactured, imported and/or
10 distributed in California, including the Products, have been and are in compliance with all laws.
11 Nothing in this Consent Judgment shall be construed as an admission by YMF of any fact, finding,
12 issue of law or violation of law, nor shall compliance with this Consent Judgment constitute or be
13 construed as an admission by YMF of any fact, finding, conclusion, issue of law or violation of law.
14 However, this section shall not diminish or otherwise affect YMF’s obligations, responsibilities and
15 duties under this Consent Judgment.

16 **1.9 Consent to Jurisdiction**

17 For purposes of this Consent Judgment only, the parties stipulate that this Court has
18 jurisdiction over YMF as to the allegations contained in the Complaint, that venue is proper in the
19 County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of this
20 Consent Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” shall mean September 22,
23 2014.

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

25 **2.1 Reformulation Standards**

26 “Reformulated Products” are defined as those Products containing DEHP in concentrations
27 less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
28 Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by

1 federal or state government agencies for the purpose of determining DEHP content in a solid
2 substance.

3 **2.2 Reformulation Commitment**

4 As of the Effective Date all Products manufactured for sale and/or purchased for sale in the
5 State of California by YMF shall be Products that qualify as Reformulated Products as defined in
6 Section 2.1 above or shall carry appropriate health hazard warnings as described in Section 2.3
7 below.

8 **2.3 Product Warnings**

9 As of the Effective Date, for all Products that do not qualify as Reformulated Products,
10 YMF shall provide clear and reasonable warnings as set forth in subsections 2.3(a) and (b). Each
11 warning shall be prominently placed with such conspicuousness as compared with other words,
12 statements, designs, or devices as to render it likely to be read and understood by an ordinary
13 individual under customary conditions before purchase or use. Each warning shall be provided in a
14 manner such that the consumer or user understands to which *specific* Product the warning applies,
15 so as to minimize the risk of consumer confusion.

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

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

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

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

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

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

4 **WARNING:** The following products contain DEHP, a phthalate
5 chemical, known to the State of California
6 to cause birth defects and other reproductive harm:
7 *[list products for which warning is required]*

8 **(b) Mail Order Catalog and Internet Sales.** In the event that YMF sells Products via
9 mail order catalog and/or the internet, to customers located in California after the Effective Date
10 that are not Reformulated Products, YMF shall provide warnings for such Products sold via mail
11 order catalog or the internet to California residents. Warnings given in the mail order catalog or on
12 the internet shall identify the *specific* Product to which the warning applies as further specified in
13 Sections 2.3(b)(i) and (ii).

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

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

21 Where it is impracticable to provide the warning on the same page and in the same location
22 as the display and/or description of the Product, YMF may utilize a designated symbol to cross
23 reference the applicable warning and shall define the term “designated symbol” with the following
24 language on the inside of the front cover of the catalog or on the same page as any order form for
25 the Product(s):

26 **WARNING:** Certain products identified with this symbol ▼
27 and offered for sale in this catalog contain DEHP,
28 a phthalate chemical known to the State of California to cause
 birth defects and other reproductive harm.

¹For purposes of the Settlement Agreement, “sold in proximity” shall mean that the Product and another similar product 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 The designated symbol must appear on the same page and in close proximity to the display
2 and/or description of the Product. On each page where the designated symbol appears, YMF must
3 provide a header or footer directing the consumer to the warning language and definition of the
4 designated symbol.

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

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

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

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

20 3. **MONETARY PAYMENTS**

21 3.1 **Civil Penalty Payments**

22 In settlement of all the claims referred to in this Consent Judgment, Defendant shall pay a
23 total of \$9,000 in civil penalties in accordance with this Section. Each penalty payment will be
24 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of
25 the funds remitted to the California Office of Environmental Health Hazard Assessment
26 (“OEHHA”) and the remaining 25% of the penalty remitted to Leeman. Each penalty payment
27 shall be made within two business days of the date it is due and be delivered to the addresses listed
28

1 in Section 3.3 below. YMF shall be liable for payment of interest, at a rate of 10% simple interest,
2 for all amounts due and owing under this Section and Section 4 that are not received within two
3 business days of the due date.

4 **3.1.1 Initial Civil Penalty**

5 Within five days of the mutual execution of this Consent Judgment, YMF shall issue
6 a check for its initial civil penalty payment in the amount of \$3,000 to "Hart King PC". Hart King
7 PC shall provide The Chanler Group with written confirmation within five days of receipt that the
8 funds have been deposited in a trust account. Within two days of the date that this Consent
9 Judgment is approved by the Court, Hart King PC shall issue two separate checks for the initial civil
10 penalty payment to: (a) "OEHHA" in the amount of \$2,250; and (b) "Dr. Whitney R. Leeman,
11 Client Trust Account" in the amount of \$750.

12 **3.1.2 Final Civil Penalty**

13 YMF shall pay a final civil penalty of \$6,000 on or before November 30, 2014. The
14 final civil penalty shall be waived in its entirety, however, if, no later than November 15, 2014, an
15 officer of YMF provides Leeman with written certification that as of the date of such certification
16 and continuing into the future, all Products manufactured, imported, distributed, sold and offered for
17 sale in California by, or on behalf of, YMF are Reformulated Products. Leeman must receive any
18 such certification on or before November 15, 2014. The certification in lieu of a final civil penalty
19 payment provided by this Section is a material term, and time is of the essence. Leeman
20 acknowledges that she has exchanged with YMF a draft copy of a declaration that meets the
21 requirements for written certification of this section, so as to qualify for waiver of the final civil
22 penalty, and that if YMF furnishes Leeman with an executed copy of such certification on or before
23 November 15, 2014, the final civil penalty shall be waived in its entirety. In the event YMF does
24 not furnish such executed written certification on or before November 15, 2014, YMF shall issue
25 two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$4,500;
26 and (b) "Dr. Whitney R. Leeman, Client Trust Account" in the amount of 1,500.

1 **3.2 Reimbursement of Fees and Costs**

2 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 this fee issue to be resolved after the material terms of the agreement had been settled. Leeman
5 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
6 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
7 Leeman and her counsel under general contract principles and the private attorney general doctrine
8 codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual
9 execution of this agreement. YMF shall, within five days of the mutual execution of this Consent
10 Judgment by the Parties, issue a check payable to “Hart King PC” in the amount of \$26,000 to be
11 held in trust by Hart King PC for The Chanler Group. Hart King PC shall provide The Chanler
12 Group with written confirmation within five days of receipt that the funds have been deposited in a
13 trust account. Within two business days of the date this Consent Judgment is approved by the
14 Court, Hart King PC shall issue a check payable to “The Chanler Group” to the address found in
15 Section 3.3.1(a), below.

16 **3.3 Payment Procedures**

17 **3.3.1. Issuance of Payments.** Payments shall be delivered as follows:

- 18 (a) All payments owed to Leeman and her counsel, pursuant to Sections 3.1
19 through 3.2, shall be delivered to the following payment address:

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

- 25 (b) All payments owed to OEHHA, pursuant to Sections 3.1 through 3.2,
26 shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”)
27 at the following addresses:
28

1 For United States Postal Service Delivery:

2 Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 P.O. Box 4010
6 Sacramento, CA 95812-4010

7 For Non-United States Postal Service Delivery:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 1001 I Street
12 Sacramento, CA 95814

13 With a copy of the checks payable to OEHHA mailed to The Chanler
14 Group at the address set forth above in 3.3.1(a), as proof of payment to
15 OEHHA.

16 **4. CLAIMS COVERED AND RELEASED**

17 **4.1 Leeman's Public Release of Proposition 65 Claims**

18 Leeman, acting on her own behalf and in the public interest, releases YMF and its parents,
19 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
20 attorneys ("Releasees") and each entity to whom they directly or indirectly distribute or sell the
21 Products including, but not limited to, their downstream distributors, wholesalers, customers,
22 retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for
23 any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products
24 sold by YMF prior to the Effective Date, as set forth in the Notice. Compliance with the terms of
25 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to
26 DEHP from the Products.

27 **4.2 Leeman's Individual Release of Claims**

28 Leeman, in her individual capacity only and *not* in her representative capacity, also provides
a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
attorneys' fees, damages, losses, claims, liabilities and demands of Leeman of any nature, character

1 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
2 exposures to DEHP in the Products sold or distributed for sale by Defendants before the Effective
3 Date.

4 **4.3 YMF's Release of Leeman**

5 YMF on behalf of itself, its past and current agents, representatives, attorneys, successors
6 and/or assignees, hereby waives any and all claims against Leeman, her attorneys and other
7 representatives, for any and all actions taken or statements made (or those that could have been
8 taken or made) by Leeman and her attorneys and other representatives, whether in the course of
9 investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
10 respect to the Products.

11 **5. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and
13 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
14 after it has been fully executed by all parties.

15 **6. SEVERABILITY**

16 If, subsequent to the execution of this Consent Judgment, any of the provisions of this
17 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions
18 remaining shall not be adversely affected.

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California
21 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
22 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
23 Consent Judgment are rendered inapplicable or no longer required as a result of any such repeal or
24 preemption or rendered inapplicable by reason of law generally as to the Products, then YMF shall
25 provide written notice to Leeman of any asserted change in the law, and shall have no further
26 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products
27 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve YMF from any
28 obligation to comply with any pertinent state or federal toxics control law.

1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to
3 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
4 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the
5 other party at the following addresses:

6 To Y M F Carpets, Inc.:

7 Jacob Shemesh, President
8 Y M F Carpets, Inc.
9 5 Truman Drive South
 Edison, NJ 08817

 To Dr. Whitney R. Leeman:

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

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

12 **9. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

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

16 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

17 Leeman and her attorneys agree to comply with the reporting form requirements referenced
18 in California Health & Safety Code § 25249.7(f).

19 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

20 Leeman and YMF agree to mutually employ their best efforts to support the entry of this
21 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
22 timely manner. The parties acknowledge that, pursuant to California Health & Safety Code
23 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which
24 Leeman shall draft and file, and YMF shall join. If any third party objection to the noticed motion
25 is filed, Leeman and YMF shall work together to file a joint reply and appear at any hearing before
26 the Court. This provision is a material component of the Consent Judgment and shall be treated as
27 such in the event of a breach.
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12. **MODIFICATION**

This Consent Judgment may be modified only: (1) by written agreement of the parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court.

13. **AUTHORIZATION**

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

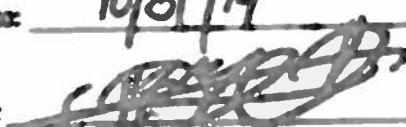
AGREED TO:

Date: _____

By: _____
Dr. Whitney R. Lozman

AGREED TO:

Date: 10/01/14

By: 
Jason Sherman, President
YMF Carpets, Inc.

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13. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 10/6/14

Date: _____

By: Whitney Leeman
Dr. Whitney A. Leeman

By: _____
Jacob Shamesh, President
YMF Carpets, Inc.