

unintentional



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 2 Jonathan A. Bornstein, State Bar No. 196345
 3 Josh Voorhees, State Bar No. 241436
 4 THE CHANLER GROUP
 5 2560 Ninth Street
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FILED
ALAMEDA COUNTY

JAN 07 2015

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

Attorneys for Plaintiff
DR. WHITNEY R. LEEMAN

RECEIVED
ALAMEDA COUNTY

NOV 03 2014

CLERK OF THE SUPERIOR COURT
By [Signature] Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

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DR. WHITNEY R. LEEMAN,
 Plaintiff,
 v.
 TRADEMARK GAMES, INC., et al.,
 Defendants.

Case No. RG14725565
~~PROPOSED~~ JUDGMENT PURSUANT
 TO TERMS OF PROPOSITION 65
 SETTLEMENT AND CONSENT
 JUDGMENT
 Date: January 6, 2015
 Time: 9:00 a.m.
 Dept.: 19
 Judge: Hon. Gail Brewster Bereola
 Reservation No. R-1566590

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Plaintiff Dr. Whitney R. Leeman. and defendant Trademark Games, Inc., having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an order approving the Proposition 65 settlement and Consent Judgment,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6, judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the terms of the settlement under Code of Civil Procedure section 664.6.

IT IS SO ORDERED.

Dated: 1/7/2015

Gail B. Bereola
JUDGE OF THE SUPERIOR COURT

GAIL B. BEREOLA

1

1 Jonathan A. Bornstein, State Bar No. 196345
2 Josh Voorhees, State Bar No. 241436
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4 2560 Ninth Street
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9 Attorneys for Plaintiff
10 DR. WHITNEY R. LEEMAN

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

15 DR. WHITNEY R. LEEMAN,

16 Plaintiff,

17 vs.

18 TRADEMARK GAMES, INC.; and DOES
19 1-150, inclusive,

20 Defendants.

Case No. RG14725565

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT TRADEMARK
GAMES, INC.**

Date:
Time:
Dept. 19
Judge: Hon. Gail Brewster Bereola

1 **I. INTRODUCTION**

2 **1.1 Dr. Whitney R. Leeman and Trademark Games, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Dr. Whitney R.
4 Leeman ("Leeman" or "Plaintiff") and defendant Trademark Games, Inc. ("TGI" or
5 "Defendant"), with Leeman and TGI 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
8 promote awareness of exposure to toxic chemicals and improve human health by reducing or
9 eliminating hazardous substances contained in consumer and commercial products.

10 **1.3 Trademark Games, Inc.**

11 Leeman alleges that TGI employs ten or more persons and is a person in the
12 course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act
13 of 1986, California Health & Safety Code §25249.5 et seq. ("Proposition 65").

14 **1.4 General Allegations.**

15 Leeman alleges that TGI has manufactured, imported, distributed and/or sold
16 stools with vinyl/PVC upholstery containing DEHP for use in the State of California without
17 the requisite Proposition 65 warnings. DEHP is listed pursuant to Proposition 65 as a
18 chemical known to the State of California to cause cancer and reproductive harm.

19 **1.5 Notice of Violation.**

20 On November 15, 2013, Leeman served TGI and various public enforcement
21 agencies with a document entitled "60-Day Notice of Violation" alleging that TGI violated
22 Proposition 65 by failing to warn California consumers that its stools with vinyl/PVC
23 upholstery including, but not limited to, the *Bud Light Lime Bar Stool, AB1000-BLLIME*,
24 exposed users in California to DEHP (the "Notice").

25 **1.6 Complaint.**

26 On May 15, 2014, Leeman filed a complaint in the Superior Court in and for
27 the County of Alameda against TGI and Does 1 through 150, *Leeman v. Trademark Games,*
28 *Inc., et al.*, Case No. RG14725565 (the "Action"), alleging violations of California Health &

1 Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain
2 upholstered stools sold by TGI in the State of California.

3 **1.7 No Admission.**

4 The Parties enter into this Consent Judgment as a full and final settlement of all
5 claims that were raised in the Notice and Complaint, or that could have been raised in the
6 Complaint, arising out of the facts and/or conduct alleged therein. TGI denies the material,
7 factual and legal allegations contained in the Notice and the Complaint, and maintains that it
8 is not a person subject to Proposition 65, nor subject to personal jurisdiction in the State of
9 California, and that all of the products it has manufactured, imported, distributed and/or sold,
10 including the Covered Products, have been, and are, in compliance with all laws, and are
11 completely safe for their intended use. By execution of this Consent Judgment and agreeing
12 to comply with its terms, TGI does not admit any facts or conclusions of law including, but
13 not limited to, any facts or conclusions of law suggesting or demonstrating that it has sold any
14 products in the State of California, or that it has committed any violations of Proposition 65,
15 or any other statutory, common law or equitable requirements relating to DEHP in Covered
16 Products, such being specifically denied by TGI. Nothing in this Consent Judgment, nor
17 compliance with its terms, shall constitute or be construed as an admission by TGI of any
18 fact, conclusion of law, issue of law or violation of law, nor that it is subject to personal
19 jurisdiction in the State of California. Nothing in this Consent Judgment shall prejudice,
20 waive or impair any right, remedy, argument or defense TGI may have in this or any other
21 future legal proceedings, including TGI's position that it is not subject to personal jurisdiction
22 in California. This Consent Judgment is the product of negotiation and compromise and is
23 accepted by TGI for purposes of settling, compromising, and resolving issues disputed in the
24 Action. However, this Section shall not diminish or otherwise affect the obligations,
25 responsibilities and duties of TGI under this Consent Judgment.

26 **1.8 Consent to Jurisdiction.**

27 For purposes of this Consent Judgment only, TGI stipulates that this Court has
28 jurisdiction over TGI as to the allegations contained in the Complaint, that venue is proper in

1 the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions
2 of this Consent Judgment.

3 **2. DEFINITIONS**

4 **2.1** "Covered Product[s]" means stools manufactured by TGI with vinyl/PVC
5 upholstery, including but not limited to the *Bud Light Lime Bar Stool, AB1000-BLLIME*,
6 which is distributed and/or sold in the State of California.

7 **2.2** "Effective Date" means November 30, 2014.

8 **3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION**

9 **3.1 Reformulation Commitment and Standards.**

10 As of the Effective Date, all vinyl/PVC that TGI purchases for use on Covered
11 Products manufactured for sale in California shall contain less than or equal to 1,000 parts per
12 million ("ppm") of DEHP when analyzed pursuant to EPA testing methodologies 3580A and
13 8270C, or equivalent methodologies utilized by federal or state agencies for the purpose of
14 determining DEHP content in a solid substance ("Reformulated Covered Products"). By
15 entering into this Consent Judgment, the Parties do not intend to expand or restrict any
16 obligations or responsibilities that may be imposed upon TGI by laws other than Proposition
17 65, nor do the Parties intend this Consent Judgment to affect any defenses available to TGI
18 under such other laws. If TGI does not meet the requirement by the Effective Date to
19 purchase only vinyl/PVC for use in the manufacture of Reformulated Covered Products for
20 sale in California, it must comply with Proposition 65 by labeling such non-Reformulated
21 Covered Products manufactured for sale in California as specified in Sections 3.2 to 3.4 after
22 the Effective Date, and must pay the Final Civil Penalty as specified in Section 4.2.

23 **3.2 Sales of Existing Products with Warnings**

24 Nothing in this Consent Judgment shall preclude TGI from fulfilling customer
25 orders, shipping, and/or selling in California its existing inventory of Covered Products.
26 Commencing on the Effective Date, TGI agrees that any Covered Products that are
27 manufactured for sale in California with vinyl/PVC that TGI purchased prior to the Effective
28 Date and which are not Reformulated Covered Products as defined in Section 3.1 will include

1 a warning affixed to the packaging, labeling, or directly on each Covered Product that states:

2 **WARNING:** This product contains a chemical known to the State of
3 California to cause birth defects or other reproductive harm.

4 **3.3 Retail Store Product Labeling**

5 After the Effective Date, TGI shall affix a warning to the packaging, labeling,
6 or directly on each non-reformulated Covered Product provided for retail sale in California
7 that states:

8 **WARNING:** This product contains a chemical known to the State of California
9 to cause birth defects or other reproductive harm.

10 **3.4 Point of Sale Warnings**

11 Alternatively, TGI may provide warning signs in the form below to its
12 customers in California with instruction to post warnings in close proximity to the point of
13 display of the Covered Products. Such instruction sent to TGI retail customers shall be sent
14 by certified mail, return receipt requested.

15 **WARNING:** This product contains a chemical known to the State of
16 California to cause birth defects or other reproductive harm.

17 Where more than one Covered Product is sold in close proximity (for purposes
18 of this Consent Judgment, "in close proximity" shall mean that the Covered Product and other
19 another similar product are sold close enough such that a consumer could not reasonably
20 determine which product is subject to the warning sign) to like items or to those that do not
21 require a warning (Reformulated Covered Products as defined in Section 3.1), the following
22 statement shall be used:

23 **WARNING:** This product contains a chemical known to the State of California to
24 cause birth defects or other reproductive harm.

25 **4. MONETARY PAYMENTS**

26 In complete settlement of all the claims referred to in this Consent Judgment,
27 TGI shall pay a total of \$15,500 in civil penalties in accordance with this Section. Each
28 penalty payment will be allocated in accordance with California Health & Safety Code §
29 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of
30 Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty

1 remitted to Leeman, as follows:

2 **4.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code §**
3 **25249.7(b).**

4 TGI shall pay an initial civil penalty in the amount of \$3,000 on or before
5 October 31, 2014. Defendant shall issue a check payable to "Rogers Joseph O'Donnell" in
6 the amount of \$3000 to be held in trust by Rogers Joseph O'Donnell. Rogers Joseph
7 O'Donnell shall provide The Chanler Group with written confirmation within five (5) days of
8 receipt that the funds have been deposited in a trust account. Within five (5) business days of
9 the date this Consent Judgment is approved by the Court, Rogers Joseph O'Donnell shall
10 issue two separate checks to: (a) OEHHA, in the amount of \$2250; and (b) "The Chanler
11 Group in Trust for Dr. Whitney R. Leeman." in the amount of \$750. All penalty payments
12 shall be delivered to the addresses listed in Section 4.4.1 below.

13 **4.2 Final Civil Penalty Pursuant to Health & Safety Code §25249.7(b).**

14 TGI shall pay a final civil penalty in the amount \$12,500 on or before January
15 30, 2015, except that the final civil penalty shall be waived in its entirety, if, on or before
16 January 15, 2015, an Officer of TGI certifies in writing that, as of the Effective Date, TGI
17 only purchased vinyl/PVC for the manufacture of Reformulated Covered Products for sale in
18 California, and that it will thereafter manufacture for sale in California only Reformulated
19 Covered Products, or that it has discontinued manufacturing for sale the Covered Products in
20 California. Such certification must be received by The Chanler Group on or before January
21 15, 2015. The certification in lieu of paying the final civil penalty provided by this Section is
22 a material term, and time is of the essence. Unless waived, TGI shall issue two separate
23 checks for its final civil penalty payment to: (a) OEHHA, in the amount of \$9375; and (b)
24 "The Chanler Group in Trust for Dr. Whitney R. Leeman." in the amount of \$3125.

25 **4.3 Reimbursement of Plaintiff's Fees and Costs.**

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

1 settled. TGI then expressed a desire to resolve the fee and cost issue shortly after the other
2 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord
3 on the compensation due to Leeman and his counsel under general contract principles and the
4 private attorney general doctrine codified at California Code of Civil Procedure section
5 1021.5, for all work performed (and to be performed) in this matter, except fees that may be
6 incurred in connection with an Office of the Attorney General, appeal (if any). Under these
7 legal principles, TGI shall pay the total amount of \$34,000 to reimburse Plaintiff's fees and
8 costs incurred investigating, litigating and enforcing this matter, inclusive of all fees and costs
9 incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval of
10 this Consent Judgment in the public interest. On or before October 31, 2014, TGI shall issue
11 a check payable to "Rogers Joseph O'Donnell" in the amount of \$34,000 to be held in trust
12 by Rogers Joseph O'Donnell for The Chanler Group. Rogers Joseph O'Donnell shall provide
13 The Chanler Group with written confirmation within five (5) days of receipt that the funds
14 have been deposited in a trust account. Within five (5) business days of the date this Consent
15 Judgment is approved by the Court, Rogers Joseph O'Donnell shall issue a check payable to
16 "The Chanler Group" which shall be delivered to the address in Section 4.4.1(a) below.

17 **4.4 Payment Procedures.**

18 **4.4.1 Funds Held For Leeman In Trust**

- 19 (a) All payments owed to Leeman, pursuant to Sections 4.1 through
20 4.2, shall be delivered to the following payment address:

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

- 26 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to
27 Sections 4.1 and 4.2, shall be delivered directly to OEHHA
(Memo line "Prop 65 Penalties") at the following addresses:

28 For United States Postal Service Delivery:

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

6 For Non-United States Postal Service Delivery:

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

12 With a copy of the checks payable to OEHHA mailed to The Chanler
13 Group at the address set forth above in 4.4.1(a), as proof of payment to
14 OEHHA.

15 If for any reason this Consent Judgment is not entered by the Court within nine
16 (9) months of November 30, 2014, Plaintiff shall meet and confer with TGI about mutually
17 agreeable steps the parties can take to ensure entry of the Consent Judgment. If such steps
18 cannot be agreed between the Parties, Plaintiff shall promptly return to TGI any and all
19 monies paid by TGI herein under Sections 4.1, 4.2 (if not waived) and 4.3 upon TGI's written
20 request.

21 **5. CLAIMS COVERED AND RELEASED**

22 **5.1** Leeman, acting on behalf of herself and in the public interest, hereby releases
23 TGI, its parents, subsidiaries, affiliated entities that are under common ownership, directors,
24 officers, employees, attorneys, shareholders ("Defendant Releasees"), and any of its
25 downstream distributors, wholesalers, customers, retailers (including but not limited to The
26 Home Depot), franchisees, cooperative members, licensors, licensees, and any other person or
27 entity to whom they directly or indirectly distribute or sell Covered Products ("Downstream
28 Defendant Releasees"), from any alleged or actual violation of Proposition 65 that has been
asserted by Leeman in the public interest in her Notice and Complaint regarding the alleged
failure to warn about exposure to DEHP in Covered Products manufactured, sold and/or
distributed by TGI prior to the Effective Date. TGI's compliance with this Consent Judgment

1 constitutes compliance with Proposition 65 with respect to DEHP in Covered Products.

2 5.2 Leeman on behalf of herself, her past and current agents, representatives,
3 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waive
4 all rights to institute or participate in, directly or indirectly, any form of legal action, and
5 releases all claims, including, without limitation, all actions, and causes of action, in law or in
6 equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or
7 expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of
8 any nature whatsoever, fixed or contingent (collectively "Claims"), against TGI, Defendant
9 Releasees, and Downstream Defendant Releasees arising from any violation or alleged
10 violation of Proposition 65 regarding the failure to warn about exposure to DEHP in Covered
11 Products manufactured, sold or distributed prior to the Effective Date.

12 5.3 Leeman also, in her individual capacity only and *not* in her representative
13 capacity, on behalf of herself, her past and current agents, representatives, attorneys,
14 successors, and/or assignees, provides a general release herein which shall be effective as a
15 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 Leeman
17 of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of
18 alleged exposure to any chemical listed under Proposition 65 from use of the Covered
19 Products manufactured prior to the Effective Date. Leeman acknowledges that she is familiar
20 with Section 1542 of the California Civil Code, which provides as follows:

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

25 Leeman, in her individual capacity only and *not* in her representative capacity,
26 expressly waives and relinquishes any and all rights and benefits which she may have under,
27 or which may be conferred on her by the provisions of Section 1542 of the California Civil
28 Code as well as under any other state or federal statute or common law principle of similar

1 effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to
2 the released matters. In furtherance of such intention, the release hereby given shall be and
3 remain in effect as a full and complete release notwithstanding the discovery or existence of
4 any such additional or different claims or facts arising out of the released matters.

5 The Parties further understand and agree that this release shall not extend
6 upstream to any entities, other than TGI, that manufactured the Covered Products or any
7 component parts thereof, or any distributors or suppliers who sold the Covered Products or
8 any component parts thereof to TGI.

9 **5.4** TGI waives any and all Claims against Leeman, her attorneys, and other
10 representatives for any and all actions taken or statements made (or those that could have
11 been taken or made) by Leeman and her attorneys and other representatives, whether in the
12 course of investigating claims or otherwise seeking enforcement of Proposition 65 against
13 them in this matter, and/or with respect to the Covered Products.

14 **5.5** TGI also provides a general release herein which shall be effective as a full and
15 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
16 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of TGI of any
17 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the
18 subject matter of the Action. TGI acknowledges that it is familiar with Section 1542 of the
19 California Civil Code, which provides as follows:

20 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
21 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
22 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
23 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM
24 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR
25 HER SETTLEMENT WITH THE DEBTOR.**

26 TGI expressly waives and relinquishes any and all rights and benefits which it
27 may have under, or which may be conferred on it by, the provisions of Section 1542 of the
28 California Civil Code, as well as under any other state or federal statute or common law
principle of similar effect, to the fullest extent that it may lawfully waive such rights or
benefits pertaining to the released matters. In furtherance of such intention, the release

1 hereby given shall be and remain in effect as a full and complete release notwithstanding the
2 discovery or existence of any such additional or different claims or facts arising out of the
3 released matters.

4 **6. COURT APPROVAL**

5 **6.1** By this Consent Judgment and upon its approval, the Parties waive their right
6 to a trial on the merits, and waive their rights to initiate appellate review of this Consent
7 Judgment, and of any and all interim rulings, including all pleading, procedural, and
8 discovery orders.

9 **6.2** The parties acknowledge that, pursuant to California Health & Safety Code §
10 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,
11 which Leeman shall file and which TGI shall not oppose.

12 **6.3** If this Consent Judgment is not approved by the Court: (a) this Consent
13 Judgment and any and all prior agreements between the Parties merged herein shall terminate
14 and become null and void, and the action shall revert to the status that existed prior to the
15 execution date of this Consent Judgment, with Trademark entitled to re-notice for hearing its
16 currently noticed motion to quash for lack of personal jurisdiction; (b) no term of this
17 Consent Judgment or any draft thereof, or of the negotiation, documentation, or other part or
18 aspect of the Parties' settlement discussions, including the parties' participation in the
19 negotiation and preparation of this Consent Judgment, shall have any effect, nor shall any
20 such matter be admissible in evidence for any purpose in this action, or in any other
21 proceeding, including in connection with TGI's motion to quash for lack of personal
22 jurisdiction in the underlying lawsuit; and (c) the Parties agree to meet and confer to
23 determine whether to modify the terms of the Consent Judgment and to resubmit it for
24 approval.

25 **7. GOVERNING LAW**

26 **7.1** The terms of this Consent Judgment shall be governed by the laws of the State
27 of California, and shall apply only to Covered Products offered for sale in the State of
28 California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable

1 by reason of law generally, or as to the Covered Products, then TGI may provide written
2 notice to Leeman of any asserted change in the law, and shall have no further obligations
3 pursuant to this Consent Judgment with respect to, and to the extent that, the Covered
4 Products are so affected.

5 7.2 The Parties, including their counsel, have participated in the preparation of this
6 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
7 This Consent Judgment was subject to revision and modification by the Parties and has been
8 accepted and approved as to its final form by all Parties and their counsel. Accordingly, any
9 uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against
10 any Party as a result of the manner of the preparation of this Consent Judgment. Each Party
11 to this Consent Judgment agrees that any statute or rule of construction providing that
12 ambiguities are to be resolved against the drafting Party should not be employed in the
13 interpretation of this Consent Judgment and, in this regard, the Parties hereby waive
14 California Civil Code § 1654.

15 **8. NOTICES**

16 8.1 Unless specified herein, all correspondence and notices required to be provided
17 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i)
18 first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on
19 any Party by the other Party at the following addresses:

20 To TGI:

21 Trademark Global, LLC
22 Attn: Dan Sustar, President
23 7951 West Erie Avenue
Lorain, Ohio 44053

24 With Copy to:

25 J. Robert Maxwell, Esq.
26 Rogers Joseph O'Donnell
27 311 California Street, 10th Floor
San Francisco, California 94104

28 ///

1 To Leeman:

2 Proposition 65 Coordinator
3 The Chanler Group
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565

7 **8.2** Any Party may, from time to time, specify in writing to the other Party a
8 change of address to which all notices and other communications shall be sent.

9 **9. MODIFICATION**

10 **9.1 Modification.** This Consent Judgment may be modified by written agreement
11 of the Parties and upon entry of a modified Consent Judgment by the court, or by motion of
12 any Party and entry of a modified Consent Judgment by the court.

13 **9.2 Subsequent Legislation.** If, subsequent to the Effective Date, legislation or
14 regulation is adopted that addresses the DEHP content of Covered Products sold in California
15 hereunder, any Party shall be entitled to request that the Court modify the reformulation
16 standard in Section 3.1 of this Consent Judgment for good cause shown.

17 **9.3 Notice; Meet and Confer.** Any Party seeking to modify this Consent
18 Judgment or to allege a violation thereof shall first attempt in good faith to meet and confer
19 with the other Party prior to filing a motion to modify the Consent Judgment.

20 **10. ENTIRE AGREEMENT**

21 **10.1** This Consent Judgment contains the sole and entire agreement and
22 understanding of the Parties with respect to the entire subject matter hereof, and any and all
23 prior discussions, negotiations, commitments, or understandings related thereto, if any, are
24 hereby merged herein. No supplementation, modification, waiver, or termination of this
25 Consent Judgment shall be binding unless executed in writing by the Party to be bound
26 thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or
27 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
28 such waiver constitute a continuing waiver unless set forth in writing between the Parties.

///

1 **11. RETENTION OF JURISDICTION**

2 **11.1** This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any
4 provision hereof, under C.C.P. §664.6. Should either Party allege a violation of this Consent
5 Judgment, the alleging Party agrees to provide written notice thereof, and to meet and confer
6 and provide all relevant evidence of any alleged violation to the other Party. If the Parties
7 cannot agree on an appropriate resolution of the alleged violation within 30 days of the
8 written notice thereof and provision of all relevant evidence, either Party shall be free to
9 move the Court to enforce the terms of this Consent Judgment.

10 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

11 **12.1** This Consent Judgment may be executed in counterparts and by facsimile or
12 portable document format (pdf), each of which shall be deemed an original, and all of which,
13 when taken together, shall constitute one and the same document.

14 **13. AUTHORIZATION**

15 **13.1** The undersigned are authorized to execute this Consent Judgment on behalf of
16 their respective Parties and have read, understood, and agree to all of the terms and conditions
17 of this Consent Judgment.

18 **AGREED TO:**

AGREED TO:

19 Date: _____

Date: 10-14-14

20 By: _____
21 Plaintiff Dr. Whitney R. Leeman

22 By: [Signature] CEO
23 Defendant Trademark Games, Inc.

1 **11. RETENTION OF JURISDICTION**

2 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
3 Consent Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any
4 provision hereof, under C.C.P. §664.6. Should either Party allege a violation of this Consent
5 Judgment, the alleging Party agrees to provide written notice thereof, and to meet and confer
6 and provide all relevant evidence of any alleged violation to the other Party. If the Parties
7 cannot agree on an appropriate resolution of the alleged violation within 30 days of the
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17 of this Consent Judgment.

18 **AGREED TO:**

AGREED TO:

19 Date: 10/14/14

Date: _____

20 By: *Whitney R. Leeman*
21 Plaintiff Dr. Whitney R. Leeman

22 By: _____
23 Defendant Trademark Games, Inc.

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