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9 Attorneys for Plaintiff
10 WHITNEY R. LEEMAN, PH.D.

ENDORSED
FILED
ALAMEDA COUNTY

JAN 26 2015

MAR 20 2015

CLERK OF THE SUPERIOR COURT
By T. Lopez Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF ALAMEDA

13 UNLIMITED CIVIL JURISDICTION

14 WHITNEY R. LEEMAN, PH.D.,

15 Plaintiff,

16 v.

17 SABIAN, LTD., *et al.*,

18 Defendants.

Case No. RG14725562
71.

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT**

Date: March 17, 2015

Time: 9:00 a.m.

Dept. 19

Judge: Hon. Gail Brewster Bereola

Reservation No.: R-1594470

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Plaintiff Whitney R. Leeman, Ph.D. and Defendant Sabian, Ltd. 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 their 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: 3/20/2015



JUDGE OF THE SUPERIOR COURT

GAIL B. BEREOLA

EXHIBIT 1

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Attorneys for Plaintiff
WHITNEY R. LEEMAN

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

WHITNEY R. LEEMAN, PH.D.,
Plaintiff,
v.
SABIAN LTD., SABIAN, INC.; and DOES
1-150, inclusive,
Defendants.

Case No.: RG14725562

[PROPOSED] CONSENT JUDGMENT

1 **I. INTRODUCTION**

2 **1.1 Whitney R. Leeman and Sabian Ltd.**

3 This Consent Judgment is entered into by and between Whitney R. Leeman, Ph.D.
4 (“Leeman” or “Plaintiff”), and Sabian Ltd. (“Sabian” or “Defendant”), with Plaintiff and Defendant
5 collectively referred to as the “Parties.”

6 **1.2 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 Sabian Ltd.**

11 Leeman alleges that Sabian 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 Sabian has manufactured, imported, distributed and/or sold cymbal bags
16 with vinyl/PVC shoulder strap pads containing di(2-ethylhexyl)phthalate (“DEHP”) without the
17 requisite Proposition 65 warnings. DEHP is listed under Proposition 65 a chemical known 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 limited to the following cymbal
21 bags: *Sabian Basic Cymbal Bag, #61035; Sabian Standard Cymbal Bag - 22”, #61008; and*
22 *Sabian Standard Cymbal Bag - 24”, #61014* manufactured, imported, distributed and/or sold by
23 Sabian, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On December 30, 2013, Leeman served Sabian and various public enforcement agencies,
26 with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided the recipients
27 with notice of alleged violations of Proposition 65 based on Sabian’s alleged failure to warn
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1 consumers that the Products exposed users in California to DEHP. To the best of the Parties'
2 knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On May 15, 2014, Leeman filed a complaint in the Superior Court in and for the County of
5 Alameda against Sabian and Does 1 through 150, *Leeman v. Sabian Ltd., Sabian Inc., et al.*, Case
6 No. RG14725562 (“Complaint” or “Action”), alleging violations of Proposition 65, based on the
7 alleged exposures to DEHP contained in certain cymbal bags with vinyl/PVC shoulder straps sold
8 by Sabian.

9 **1.8 No Admission**

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

18 **1.9 Consent to Jurisdiction**

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

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” shall mean December 15,
25 2014.

1 **2. INJUNCTIVE RELIEF: REFORMULATION**

2 **2.1 Reformulated Products**

3 Commencing on the Effective Date, and continuing thereafter, Sabian shall only sell, offer
4 for sale, or distribute for sale in California, Reformulated Products, or Products that contain a clear
5 and reasonable warning pursuant to Section 2.2. For purposes of this Consent Judgment,
6 “Reformulated Products” are defined as those Products containing DEHP in concentrations less
7 than 0.1 percent (1,000 parts per million) in each accessible component when analyzed pursuant to
8 U.S. Environmental Protection Agency testing methodologies 3580A and
9 8270C, or any other methodology utilized by federal or state agencies for the purpose of
10 determining the DEHP content in a solid substance.

11 **2.3 Clear and Reasonable Warnings**

12 Commencing on the Effective Date for all Products that are not Reformulated Products,
13 Sabian agrees that it will only offer such Products for sale or shipment in California with a clear and
14 reasonable warning pursuant to this Section. Sabian further agrees that the warning will be
15 prominently placed with such conspicuousness as compared with other words, statements, designs,
16 or devices as to render it likely to be read and understood by an ordinary individual under
17 customary conditions before purchase or use. Each warning shall be provided in a manner such
18 that the consumer or user understands to which *specific* Product the warning applies, so as to
19 minimize the risk of consumer confusion. For purposes of this Consent Judgment, a clear and
20 reasonable warning shall consist of a warning affixed to the packaging, label, tag, or directly to the
21 Product, or, for internet or mail order catalogue sales, in accordance with Section 2.3(a), and such
22 warnings shall contain the following statement:

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

26 **(a) Mail Order Catalog and Internet Sales.** In the event that Sabian sells
27 Products via mail order catalog and/or the internet, to customers located in California, after the
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1 Effective Date, that are not Reformulated Products, Sabian shall provide warnings for such
2 Products sold via mail order catalog or the internet to California residents. Warnings given in the
3 mail order catalog or on the internet shall identify the *specific* Product to which the warning
4 applies as further specified in Sections 2.3(a)(i) and (ii).

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

9 WARNING: This product contains DEHP, a chemical
10 known to the State of California to cause
11 birth defects and other reproductive harm.

12 Where it is impracticable to provide the warning on the same page and in the same
13 location as the display and/or description of the Product, Sabian may utilize a designated symbol
14 to cross reference the applicable warning and shall define the term "designated symbol" with the
15 following language on the inside of the front cover of the catalog or on the same page as any
16 order form for the Product(s):

17 WARNING: Certain products identified with this symbol ▼
18 and offered for sale in this catalog contain DEHP,
19 a chemical known to the State of California to cause
20 birth defects and other reproductive harm.

21 The designated symbol must appear on the same page and in close proximity to the
22 display and/or description of the Product. On each page where the designated symbol appears,
23 Sabian must provide a header or footer directing the consumer to the warning language and
24 definition of the designated symbol.

25 (ii) **Internet Website Warning.** A warning shall be given in
26 conjunction with the sale of the Products via the internet, which warning shall appear either: (a)
27 on the same web page on which a Product is displayed; (b) on the same web page as the order
28 form for a Product; (c) on the same page as the price for any Product; or (d) on one or more web

1 pages displayed to a purchaser during the checkout process. The following warning statement
2 shall be used and shall appear in any of the above instances adjacent to or immediately following
3 the display, description, or price of the Product for which it is given in the same type size or
4 larger than the Product description text:

5
6 WARNING: This product contains DEHP, a chemical
7 known to the State of California to cause
8 birth defects and other reproductive harm.

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

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

15 **3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE § 25249.7(b)**

16 In settlement of all the claims referred to in this Consent Judgment, Sabian shall pay a
17 total of \$8,000 in civil penalties in accordance with this Section. Each penalty payment will be
18 allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75 %
19 of the funds remitted to the California Office of Environmental Health Hazard Assessment
20 (“OEHHHA”) and the remaining 25 % of the penalty remitted to Leeman, as follows:

21 **3.1 Initial Civil Penalty**

22 Within five days of the Effective Date, Sabian shall make an initial civil penalty payment
23 of \$3,000 to be apportioned in accordance with Section 3 above. Sabian shall issue two separate
24 checks for its initial civil penalty payment to: (a) “OEHHHA” in the amount of \$2,250; and (b)
25 “Whitney R. Leeman, Client Trust Account” in the amount of \$750. On the date which this Court
26 approves this Consent Judgment (including any tentative rulings not opposed by either party),
27 K&L Gates, LLP shall send each check to its appropriate recipient, as further detailed in Section

28 3.4.

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3.2 Final Civil Penalty

Sabian shall pay a final civil penalty of \$5,000 on or before March 15, 2015. The final civil penalty shall be waived in its entirety, however, if, no later than March 1, 2015, an officer of Sabian provides Leeman with written certification that, as of the date of such certification and continuing into the future, Sabian has met the reformulation standard specified in Section 2.1 above, such that all Products it sells, offers for sale, or distributes for sale in California by Sabian are Reformulated Products and that Sabian will continue to sell, offer for sale, or distribute for sale in California only Reformulated Products. Leeman must receive any such certification on or before March 1, 2015. The certification in lieu of a final civil penalty payment provided by this Section is a material term, and time is of the essence. Sabian shall issue two separate checks for its final civil penalty payments to: (a) "OEHHA" in the amount of \$3,750; and (b) "Whitney R. Leeman, Client Trust Account" in the amount of \$1,250. Unless waived, this payment shall be made in the manner detailed in Section 3.4 below.

3.3 Reimbursement of Plaintiff's Fees and Costs

The Parties acknowledge that Leeman and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the fee issue to be resolved after the material terms of the agreement had been settled. Sabian then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed (and to be performed) in this matter, except fees that may be incurred in connection with a third-party, including the Office of the Attorney General, appeal (if any). Under these legal principles, Sabian shall pay the amount of \$28,500 to reimburse Leeman's fees and costs incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the public interest. This payment shall be made in the manner detailed in

1 Section 3.4 below, on or before the Effective Date.

2 **3.4 Payment Procedures**

3 **3.4.1. Issuance of Payments.** Payments shall be delivered as follows:

4 (a) All payments owed to Leeman pursuant to Sections 3.1 and 3.3, shall be
5 delivered to the attorney of record for Sabian within five days of the
6 Effective Date, and shall be held in trust pending the Court's approval
7 of this Consent Judgment, including any tentative rulings not opposed
8 by either of the Parties. Such counsel shall confirm, in writing within 5
9 days of deposit, that the funds have been received. Within five days of
10 the date on which the Court approves the Consent Judgment, including
11 any tentative rulings not opposed by the Parties, the payments being
12 held by the attorney of record for Sabian shall be delivered to The
13 Chanler Group in two separate checks payable to: (i) "Whitney R.
14 Leeman, Client Trust Account" in the amount of \$750; and (ii) "The
15 Chanler Group" in the amount of \$28,500, to the following payment
16 address:

17 The Chanler Group
18 Attn: Proposition 65 Controller
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710

22 (b) All payments owed to OEHHA, pursuant to Sections 3.1 through 3.2,
23 shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties")
24 at the following addresses:

25 For United States Postal Service Delivery:

26 Mike Gyurics
27 Fiscal Operations Branch Chief
28 Office of Environmental Health Hazard Assessment
P.O. Box 4010
Sacramento, CA 95812-4010

1
2 For Non-United States Postal Service Delivery:

3 Mike Gyurics
4 Fiscal Operations Branch Chief
5 Office of Environmental Health Hazard Assessment
6 1001 I Street
7 Sacramento, CA 95814

8 With a copy of the checks payable to OEHHA mailed to The Chanler
9 Group at the address set forth above in 3.4.1(a), as proof of payment to
10 OEHHA.

11 (c) If the penalty payment owed to Leeman as required by Section 3.2 above
12 is not waived, payment shall be delivered directly to The Chanler Group
13 at the following address:

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710

19 **4. CLAIMS COVERED AND RELEASED**

20 **4.1 Leeman's Release of Proposition 65 Claims**

21 Leeman acting on her own behalf and in the public interest releases Sabian, its parents,
22 subsidiaries, affiliated entities under common ownership, directors, officers, stockholders,
23 employees, attorneys, and each entity to whom Sabian directly or indirectly distributes or sells
24 Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers,
25 franchisees, cooperative members, and licensees ("Releasees"), from all claims for violations of
26 Proposition 65 based on their failure to warn about alleged exposures to DEHP contained in the
27 Products that were manufactured, distributed, or sold by Sabian prior to the Effective Date.
28 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
with respect to exposures to DEHP from the Products as set forth in the Notice.

4.2 Leeman's Individual Release of Claims

Leeman also, in her individual capacity only and *not* in her representative capacity, provides
a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all

1 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
2 liabilities and demands of plaintiff of any nature, character or kind, whether known or unknown,
3 suspected or unsuspected, limited to and arising out of alleged or actual exposures to Proposition 65
4 Listed Chemicals in the Products manufactured, distributed or sold by Sabian.

5 **4.3 Sabian's Release of Leeman**

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

12 **5. COURT APPROVAL**

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

16 **6. SEVERABILITY**

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

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the State of California
22 and apply within the State of California. In the event that Proposition 65 is repealed, preempted or
23 is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this
24 Consent Judgment are rendered inapplicable by preemption or reason of law generally as to the
25 Products, then Sabian shall have no further obligations pursuant to this Consent Judgment with
26 respect to, and to the extent that, the Products are so affected.

27 **8. NOTICES**

28 Unless specified herein, all correspondence and notices required to be provided pursuant to

1 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,
2 (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the
3 other Party at the following addresses:

4 To Sabian:

5 Mike Connell
6 Sabian Ltd.
7 219 Main Street
8 Meductic, NB E6H 2L5
9 Canada

To Leeman:

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

10 With a copy to:

11 Edward P. Sangster, Esq.
12 Daniel Fox, Esq.
13 4 Embarcadero Center,
14 Suite 1200
15 San Francisco, CA 94111-5994
16 United States of America

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

19 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

26 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

27 Leeman and Sabian agree to mutually employ their best efforts to support the entry of this
28 agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code
§ 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which

1 Leeman shall draft and file, and Sabian shall join. If any third party objection to the noticed motion
2 is filed, Leeman and Sabian shall work together to file a joint reply and appear at any hearing before
3 the Court. This provision is a material component of the Consent Judgment and shall be treated as
4 such in the event of a breach.

5 **12. MODIFICATION**

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

9 **13. AUTHORIZATION**

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

14 AGREED TO:

AGREED TO:

15
16 Date: 1/5/15

Date: 12.15.2014

17
18 By: Whitney R. Leeman
Plaintiff, Whitney R. Leeman

By: Michael Connell
[insert name], [insert title]
Sabian Ltd.

MICHAEL CONNELL
VICE PRESIDENT, FINANCE