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FILED
ALAMEDA COUNTY

SEP 27 2016

CLERK OF THE SUPERIOR COURT
By C.W. J. Deputy

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

JUL 28 2016

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

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

DEE ZEE, INC.; et al.,

Defendants.

Case No. RG16816698

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

Date: September 13, 2016

Time: 3:00 p.m.

Dept.: 22

Judge: Hon. Robert McGuinness

Reservation No. R-1764579

1 In the captioned action, plaintiff Whitney R. Leeman, Ph.D. and defendant Dee
2 Zee, Inc., having agreed through their respective counsel that judgment be entered pursuant
3 to the terms of their settlement agreement in the form of a stipulated judgment ("Consent
4 Judgment"), and following this Court's issuance of an Order approving this Proposition 65
5 settlement and Consent Judgment on September 13, 2016;

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to
7 California Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure
8 § 664.6, Judgment is entered in accordance with the terms of the Consent Judgment
9 attached hereto as **Exhibit 1**. By stipulation of the parties, the Court will retain jurisdiction
10 to enforce the settlement under Code of Civil Procedure § 664.6.

11 **IT IS SO ORDERED.**

12
13 Dated: 9/26/16
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15 JUDGE OF THE SUPERIOR COURT
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D.,
Plaintiff,
v.
DEE ZEE, INC.,
Defendant.

Case No. RG16816698

~~PROPOSED~~ CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D.
4 ("Leeman"), and Dee Zee, Inc. ("Dee Zee"), with Leeman and Dee Zee each individually referred to
5 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 to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Leeman alleges that Dee Zee imports, sells, or distributes for sale in California vinyl/PVC
16 cables that contain di(2-ethylhexyl)phthalate ("DEHP") without first providing the exposure warning
17 required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known to cause
18 birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC cables containing DEHP that
21 are imported, sold, or distributed for sale in California by Dee Zee ("Products") including, but not
22 limited to, the cable component of the *DeeZee Portable Safe, UPC #0 19023 98201 9*.

23 **1.6 Notice of Violation**

24 On August 20, 2015, Leeman served Dee Zee, the California Attorney General, and all other
25 requisite public enforcers with a 60-Day Notice of Violation ("Notice"), alleging that Dee Zee
26 violated Proposition 65 by failing to warn its customers and consumers in California of the health
27 hazards associated with exposures to DEHP from the Products. No public enforcer has commenced
28 and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1 **1.7 Complaint**

2 On May 23, 2016, Leeman filed the instant action (“Complaint”), naming Dee Zee as a
3 defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.8 No Admission**

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

13 **1.9 Jurisdiction**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over Dee Zee as to the allegations in the Complaint, that venue is proper in Alameda
16 County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
17 Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
20 the Motion for Approval of the Consent Judgment is granted by the Court.

21 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

22 Commencing on the Effective Date and continuing thereafter, Dee Zee agrees to only
23 manufacture for sale, or purchase for sale in California, “Reformulated Products.” For purposes of
24 this Consent Judgment, Reformulated Products are Products containing DEHP in a maximum
25 concentration of 1,000 parts per million (0.1%) when analyzed pursuant to U.S. Environmental
26 Protection Agency testing methodologies 3580A and 8270C or equivalent methodologies utilized by
27 state or federal agencies for the purpose of determining DEHP content in a solid substance.

28 **3. MONETARY SETTLEMENT TERMS**

1 **3.1 Civil Penalty Payments**

2 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all the claims referred
3 to in the Notice, Complaint, and this Consent Judgment, Dee Zee shall pay \$8,000 in civil penalties.
4 Each civil penalty payment shall be allocated according to Health and Safety Code § 25249.12(c)(1)
5 and (d), with seventy-five percent (75%) of the penalty paid to the California Office of
6 Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%)
7 of the penalty retained by Leeman. Leeman’s counsel shall be responsible for delivering OEHHA’s
8 portion of the penalty payment(s) made under this Consent Judgment.

9 **3.1.1 Initial Civil Penalty Payment**

10 Dee Zee shall make an initial civil penalty payment of \$2,000.

11 **3.1.2 Final Civil Penalty Payment**

12 On October 1, 2016, Dee Zee shall make a final civil penalty payment of \$6,000. Pursuant to
13 title 11 California Code of Regulations, § 3203(c), Leeman agrees that the final civil penalty payment
14 shall be waived in its entirety if, no later than September 15, 2016, an officer of Dee Zee provides
15 Leeman with a signed declaration certifying that all of the Products it is selling, shipping for sale, or
16 distributing for sale in California as of the date of its declaration are Reformulated Products as
17 defined by Section 2, and that Dee Zee will continue to offer only Reformulated Products for sale in
18 California in the future. Alternatively, Dee Zee may certify that it is not currently offering the
19 Products for sale in California but, in the event it decides to recommence sales, it agrees to only offer
20 Reformulated Products. The option to certify product reformulation (or a commitment to reformulate
21 future sales) in lieu of making the final civil penalty payment required by this Section is a material
22 term, and time is of the essence.

23 **3.2 Reimbursement of Attorney’s Fees and Costs**

24 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
25 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
26 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
27 other settlement terms had been finalized, the Parties negotiated the compensation due to Leeman and
28 her counsel under general contract principles and the private attorney general doctrine codified at