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WHITNEY R. LEEMAN, PH.D.

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D.,
Plaintiff,
v.
A & D ENGINEERING, INC.; *et al.*,
Defendants.

Case No. 16CV297548
**STIPULATION AND [PROPOSED]
ORDER RE CONSENT JUDGMENT**
(Health & Safety Code § 25249.6 *et seq.*, and
Code Civ. Proc. § 664.6)

ENDORSED
FILED
SEP 28 2017

CLERK OF THE COURT
SUPERIOR COURT OF CA
COUNTY OF SANTA CLARA
BY A. Hwang DEPUTY

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Stipulation and Order Re Consent Judgment (“Consent Judgment”) is entered by and
4 between plaintiff Whitney R. Leeman, Ph.D. (“Leeman”), and defendant A & D Engineering, Inc.
5 (“A & D”), with Leeman and A & D each individually referred to as a “Party” and collectively as the
6 “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

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

15 **1.4 General Allegations**

16 Leeman alleges that A & D manufactures, distributes, and offers for sale in California
17 stethoscopes with vinyl/PVC tubing that contain DEHP without first providing the health hazard
18 warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known
19 to cause birth defects or other reproductive harm.

20 **1.5 Product Description**

21 For purposes of this Consent Judgment “Covered Products” means stethoscopes (or A & D
22 products with stethoscope components) with vinyl/PVC tubing containing DEHP that are
23 manufactured, distributed, sold, and/or offered for sale in California by A & D, including (i)
24 *LifeSource Home Blood Pressure Kit with Attached Stethoscope, Model UA-101, UPC No. 0 93764*
25 *00100 0*; (ii) *LifeSource Dual Head Stethoscope, Model DH-211-LS, UPC No. 0 93764 60012 8*; and
26 *(iii) LifeSource Dual Head Stethoscope, Model DH-201-LS, UPC No. 0 93764 20201 8.*
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1 **1.6 Notice of Violation**

2 On September 15, 2015, Leeman served A & D and the requisite public enforcement
3 agencies with a 60-Day Notice of Violation (“Notice”) alleging that A & D violated Proposition 65
4 by failing to warn its customers and consumers in California of the health hazards associated with
5 exposures to DEHP from the Covered Products. No public enforcer has commenced and is
6 diligently prosecuting an action to enforce the violations alleged in the Notice.

7 **1.7 Complaint**

8 On July 13, 2016 Leeman filed the instant action (“Complaint”), naming A & D as a
9 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
10 the Notice.

11 **1.8 No Admission**

12 A & D denies the material, factual, and legal allegations contained in the Notice and
13 Complaint, and maintains that all the products it has manufactured, distributed, or offered for sale in
14 California, including the Covered Products, have been, and are, in compliance with all laws. Nothing
15 in this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,
16 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
17 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.
18 This Section shall not, however, diminish or otherwise affect A & D’s obligations, responsibilities,
19 and duties under this Consent Judgment.

20 **1.9 Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
22 jurisdiction over A & D as to the allegations in the Complaint, that venue is proper in Santa Clara
23 County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
24 Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

25 **1.10 Effective Date**

26 For purposes of this Consent Judgment, the term “Effective Date” means the date the Court
27 enters judgment in this action.

28

1 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS & WARNINGS**

2 **2.1 Commitment to Reformulate Products or Provide Warnings**

3 Beginning within 30 days of the Effective Date and continuing thereafter, A & D agrees not to
4 sell Covered Products in California unless they are either (a) "Reformulated Products" as defined by
5 Section 2.2; or (b) Covered Products that bear a clear and reasonable warning in accordance with
6 Section 2.3.

7 **2.2 Reformulated Products Defined**

8 For purposes of this Consent Judgment, "Reformulated Products" are defined as Covered
9 Products containing no more than 1,000 parts per million (0.1%) DEHP content when analyzed
10 pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or
11 equivalent methodologies utilized by state or federal agencies to determine DEHP content in a solid
12 substance.

13 **2.3 Warnings**

14 Commencing within 30 days of the Effective Date and continuing thereafter, for any Covered
15 Products sold or distributed for sale in California by A &D that are not Reformulated Products, A &
16 D will only offer such Covered Products for sale with a clear and reasonable warning in accordance
17 with this Section. A & D further agrees that any warning used will be prominently placed in relation
18 to the Covered Product with such conspicuousness when compared with other words, statements,
19 designs, or devices as to render it likely to be read and understood by an ordinary individual under
20 customary conditions of purchase or use. For purposes of this Consent Judgment, a clear and
21 reasonable warning for the Products satisfying these criteria shall consist of a warning that complies
22 with title 27 California Code of Regulations section 25600, et seq., and that is affixed directly to a
23 Product or its accompanying labeling or packaging sold in or into California. A warning containing
24 the following statement shall be deemed clear for purposes of this Consent Judgment:

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

28 In the event that A & D sells Covered Products via an internet website to customers located in
California, the warning requirements of this section shall be satisfied if the foregoing warning

1 appears either: (a) on the same web page on which a Covered Product is displayed and/or described;
2 (b) on the same page as the price for the Covered Product; or (c) on one or more web pages displayed
3 to a purchaser prior to purchase during the checkout process. Alternatively, a symbol consisting of a
4 black exclamation point in a yellow or white equilateral triangle may appear adjacent to or
5 immediately following the display, description, price, or checkout listing of the Covered Product,
6 provided the warning statement appears elsewhere on the same web page in a manner that clearly
7 associates it with the Covered Product(s) to which the warning applies.

8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Civil Penalty Payments**

10 Pursuant to Health and Safety Code section 25249.7(b), and in settlement of all the claims
11 referred to in the Notice, Complaint, and this Consent Judgment, A & D shall pay \$2,000 in civil
12 penalties. A & D's civil penalty payment shall be allocated in accordance with Health and Safety
13 Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the
14 California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
15 twenty-five percent (25%) of the penalty retained by Leeman. A & D shall deliver its payment in two
16 checks for the following amounts made payable to (a) "OEHHA" in the amount of \$1,500; and
17 "Whitney R. Leeman, Client Trust Account" in the amount of \$500. Leeman's counsel shall be
18 responsible for delivering OEHHA's portion of the penalties paid under this Consent Judgment.

19 **3.2 Reimbursement of Attorney's Fees and Costs**

20 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute without
21 reaching terms on the fees and costs to be reimbursed to them, thereby leaving the issue to be
22 resolved after the material terms of this Consent Judgment had been settled. Shortly after the other
23 settlement terms had been finalized, the Parties negotiated the compensation due to Leeman and her
24 counsel under general contract principles and the private attorney general doctrine codified at
25 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
26 execution of this Consent Judgment, and court approval of the same, but exclusive of fees and costs
27 on appeal, if any. Under these legal principles, A & D agrees to pay \$20,000 for all fees and costs
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1 incurred by Leeman investigating, bringing this matter to A & D's attention, litigating and
2 negotiating a settlement in the public interest.

3 **3.3 Payment Timing**

4 A & D shall deliver all payments required by this Consent Judgment to Leeman's counsel at
5 the address provided in Section 3.4 within ten (10) days of the Effective Date.

6 **3.4 Payment Address**

7 All payments required by this Consent Judgment shall be delivered to:

8 The Chanler Group
9 Attn: Proposition 65 Controller
10 2560 Ninth Street
11 Parker Plaza, Suite 214
12 Berkeley, CA 94710

11 **4. CLAIMS COVERED AND RELEASED**

12 **4.1 Leeman's Public Release of Proposition 65 Claims**

13 This Consent Judgment is a full, final, and binding resolution between Leeman, on her own
14 behalf and in the public interest, and A & D and each of its past and present parents, affiliates,
15 subsidiaries, divisions, predecessors, successors, and assigns, and each of their respective owners,
16 officers, directors, board members, trustees, shareholders, managers, members, employees, agents,
17 insurers, attorneys, auditors, accountants, experts, stockholders, representatives, partners, and any
18 other persons acting on their behalf ("Released Parties") concerning or in any way relating to the
19 claims that have been or could have been asserted against A & D and/or the Released Parties up
20 through the Effective Date, provided that such claims are based on or relate to the failure to warn
21 about exposures to DEHP in Covered Products sold by A & D before the Effective Date, as alleged
22 in the Notice and Complaint. Compliance with the terms of this Consent Judgment constitutes
23 compliance with Proposition 65 with respect to alleged or actual exposures to DEHP from Covered
24 Products manufactured, distributed, imported, sold, or offered for sale by A & D after the Effective
25 Date.

26 **4.2 Leeman's Individual Release of Claims**

27 Leeman, in her individual capacity only and not in any representative capacity, also provides
28 a release to A & D, and the Released Parties, which shall be effective as a full and final accord and

1 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
2 damages, losses, claims, liabilities and demands of any nature, character or kind, whether known or
3 unknown, suspected or unsuspected that have been or could have been asserted based on the
4 allegations in the Complaint.

5 **4.3 A & D's Release of Leeman**

6 A & D, on its own behalf, and on behalf of its past and current agents, representatives,
7 attorneys, successors, and assignees, hereby waives all claims against Leeman, her attorneys and
8 other representatives, for any actions taken or statements made by Leeman, her attorneys or other
9 representatives, whether in the course of investigating claims, seeking to enforce Proposition 65
10 against it in this matter, or with 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 shall
13 be null and void if it is not approved and entered by the Court within one year after it has been fully
14 executed by the Parties, or by such additional time as the Parties may agree to in writing.

15 **6. SEVERABILITY**

16 If, after the Court's approval and entry of this Consent Judgment as a judgment, any provision
17 is held by a court to be unenforceable, the validity of the remaining provisions shall not be adversely
18 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. If Proposition 65 is repealed, or is otherwise rendered
22 inapplicable by reason of law generally or as to the Products, then A & D may provide written notice
23 to Leeman of any asserted change in the law, and shall have no further injunctive obligations
24 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.

25 **8. NOTICE**

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

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For A & D:

Terry Duesterhoeft, President
A & D Engineering, Inc.
1756 Automation Parkway
San Jose, CA 95131

with a copy to:

Michael J. Steel, Esq.
Navi Dhillon, Esq.
Morrison Foerster
425 Market Street
San Francisco, CA 94105

For Leeman:

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

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

9. COUNTERPARTS: FACSIMILE SIGNATURES

This Consent Judgment may be executed in counterparts and by facsimile signature or e-mail, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. POST EXECUTION ACTIVITIES

Leeman agrees to comply with the reporting form requirements referenced in Health and Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of their settlement, which motion Leeman shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a minimum, supporting the motion for approval, responding to any objection that any third-party may file or lodge, and appearing at the hearing before the Court, if so requested.

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11. MODIFICATION

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

12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and acknowledge that they have read, understand, and agree to all the terms and conditions contained herein.


AGREED TO:

AGREED TO:

Date: 7/20/2017

Date: July 17, 2017

By: 
WHITNEY R. LEEMAN, PH.D.

By: 
Terry Duesterheft, President
A & D ENGINEERING, INC.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

Dated: SEP 28 2017

James Stoelker

JUDGE OF THE SUPERIOR COURT