

FILED

DEC 30 2016

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Berg, Deputy

1 Brian C. Johnson, State Bar No. 235965
2 THE CHANLER GROUP
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710-2565
6 Telephone: (510) 848-8880
7 Facsimile: (510) 848-8118
8 brian@chanler.com

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

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF MARIN

13 UNLIMITED CIVIL JURISDICTION

14 WHITNEY R. LEEMAN, PH.D.,

15 Plaintiff,

16 v.

17 DOREL INDUSTRIES INC., *et al.*,

18 Defendants.

Case No. CIV1600303

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

Date: 12/30/2016

Time: 1:30 p.m.

Dept.: E

Judge: Hon. Paul M. Haakenson

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff Whitney R. Leeman, Ph.D. and defendant Pacific Cycle Inc. having agreed through their respective counsel that judgment be entered pursuant to the terms of their settlement agreement in the form of a stipulated judgment ("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: DEC 30 2016

PAUL M. HAAKENSON
JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

1 Brian C. Johnson, State Bar No. 235965
2 THE CHANLER GROUP
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710-2565
6 Telephone: (510) 848-8880
7 Facsimile: (510) 848-8118

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

10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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

WHITNEY R. LEEMAN, PH.D.,
Plaintiff,
v.
DOREL INDUSTRIES INC., *et al.*,
Defendants.

Case No. CIV1600303

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT PACIFIC CYCLE
INC.**

(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 Pacific Cycle Inc. ("Pacific"), with Leeman and Pacific 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 Pacific 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 § 25249.6 *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

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

19 **1.5 Products Defined**

20 For purposes of this Consent Judgment, "Products" are defined as vinyl/PVC audio cords or
21 cables containing DEHP that are imported, sold, or distributed for sale in California by Pacific
22 including, but not limited to, the speaker cable component of the *Noize Speaker Case, Item#:*
23 *MG77776-4, UPC #0 38675 02631 5.*

24 **1.6 Notice of Violation**

25 On October 28, 2015, Leeman served Pacific, and the requisite public enforcement agencies
26 with a 60-Day Notice of Violation ("Notice"), alleging that Pacific violated Proposition 65 by failing
27 to warn its customers and consumers in California of the health hazards associated with exposures to
28

1 DEHP from the Products. No public enforcer has commenced and is diligently prosecuting an action
2 to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On January 26, 2016, Leeman filed the instant action ("Complaint"), naming Pacific as a
5 defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of the
6 Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Pacific as to the allegations in the Complaint, that venue is proper in the County of
19 Marin, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
20 Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
23 this Consent Judgment is approved by the Court.

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

25 Pacific shall not manufacture, distribute, sell or offer for sale in California any Products with
26 a production date after the Effective date except for Reformulated Products. For purposes of this
27 Consent Judgment, "Reformulated Products" are defined as Products containing a maximum DEHP
28 concentration of 1,000 parts per million (0.1%) in any component analyzed pursuant to U.S.

1 Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent
2 methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a
3 solid substance.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Civil Penalty Payments**

6 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all the claims referred
7 to in the Notice, Complaint, and this Consent Judgment, Pacific shall pay \$2,500.00 in civil penalties.
8 The civil penalty payment shall be allocated according to Health and Safety Code § 25249.12(c)(1)
9 and (d), with seventy-five percent (75%) of the penalty paid to the California Office of
10 Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%)
11 of the penalty retained by Leeman. Pacific Cycle shall deliver its payment in two checks for the
12 following amounts made payable to: (a) "OEHHA" in the amount of \$1,875.00; and (b) "Whitney R.
13 Leeman, Client Trust Account" in the amount of \$625.00. Leeman's counsel shall be responsible for
14 delivering OEHHA's portion of the penalty payment made under this Consent Judgment.

15 **3.2 Reimbursement of Attorney's Fees and Costs**

16 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
17 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
18 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
19 other settlement terms had been finalized, the Parties negotiated the compensation due to Leeman and
20 her counsel under general contract principles and the private attorney general doctrine codified at
21 California Code of Civil Procedure § 1021.5 for all work performed through the mutual execution of
22 this Consent Judgment, and through court approval of the same, but exclusive of fees and costs on
23 appeal, if any. Pacific shall pay \$27,000.00 for all fees and costs incurred by Leeman investigating,
24 bringing this matter to Pacific's attention, litigating and negotiating a settlement in the public interest.

25 **3.3 Payment Timing; Payments Held in Trust**

26 All payments due under this Consent Judgment shall be held in trust until the Court approves
27 the Parties' settlement. All payments due under this agreement shall be delivered within fifteen (15)
28 days of the date that this Consent Judgment is fully executed by the Parties, and held in trust by

1 Pacific's counsel until the Effective Date. Pacific's counsel shall provide Leeman's counsel with
2 written confirmation of its receipt of Pacific's settlement payments. Within five days of the Court's
3 approval of this Consent Judgment, Pacific's counsel shall deliver the civil penalty and attorneys'
4 fee reimbursement payments to Leeman's counsel at the address in Section 3.4.

5 **3.4 Payment Address**

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

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

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Leeman's Public Release of Proposition 65 Claims**

12 Leeman, acting on her own behalf and in the public interest, releases Pacific and its parents
13 (including, without limitation, Dorel Industries, Inc.), subsidiaries, affiliated entities under common
14 ownership, directors, officers, employees, and attorneys ("Releasees"), and each entity to whom
15 Pacific directly or indirectly distributes or sells the Products including, without limitation, its
16 downstream customers, distributors, wholesalers, and retailers ("Downstream Releasees") for any
17 violation arising under Proposition 65 pertaining to the failure to warn about exposures to DEHP
18 from Products sold or distributed for sale by Pacific prior to the Effective Date, as set forth in the
19 Notice. Compliance with the terms of this Consent Judgment constitutes compliance with
20 Proposition 65 with respect to exposures to DEHP from Products sold or distributed for sale by
21 Pacific after the Effective Date.

22 **4.2 Leeman's Individual Release of Claims**

23 Leeman, in her individual capacity only and *not* in her representative capacity, also provides a
24 release to Pacific, Releasees, and Downstream Releasees which shall be effective as a full and final
25 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
26 attorneys' fees, damages, losses, claims, liabilities and demands of Leeman of any nature, character
27 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
28 exposures to DEHP in Products sold or distributed for sale by Pacific before the Effective Date.

1 **4.3 Pacific's Release of Leeman**

2 Pacific, on its own behalf, and on behalf of its past and current agents, representatives,
3 attorneys, successors, and assignees, hereby waives any and all claims against Leeman and her
4 attorneys and other representatives, for any and all actions taken or statements made by Leeman and
5 her attorneys and other representatives, whether in the course of investigating claims, otherwise
6 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

7 **5. COURT APPROVAL**

8 This Consent Judgment is not effective until it is approved and entered by the Court and shall
9 be null and void if it is not approved and entered by the Court within one year after it has been fully
10 executed by the Parties, or by such additional time to which the Parties agree in writing.

11 **6. SEVERABILITY**

12 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
13 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
14 adversely affected.

15 **7. GOVERNING LAW**

16 The terms of this Consent Judgment shall be governed by the laws of the state of California
17 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
18 rendered inapplicable by reason of law generally or as to the Products, then Pacific may provide
19 written notice to Leeman of any asserted change in the law, and shall have no further injunctive
20 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
21 so affected.

22 **8. NOTICE**

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

26 For Pacific:

27 Robert Kmoch, President
28 Pacific Cycle Inc.
 4902 Hammersley Road
 Madison, WI 53711

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

with a copy to Pacific's counsel:

P. Mark Mahoney, Esq.
Schiff Hardin LLP
One Market, Spear St. Tower
32nd Floor
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, 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 § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code § 25249.7(f), a noticed motion for judicial approval of the settlement is required, which motion Held 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, responding to any third-party objections, and appearing at the hearing on the motion, if so requested.

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.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. AUTHORIZATION

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

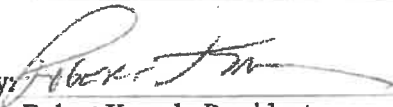
AGREED TO:

AGREED TO:

Date: 10/7/2016

Date: 10-4-16

By: 
WHITNEY R. LEEMAN, PH.D.

By: 
Robert Knoch, President
PACIFIC CYCLE INC.