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Attorneys for Defendant
DR. PEPPER BOTTLING
COMPANY OF WEST JEFFERSON

SUPERIOR COURT OF THE STATE OF CALIFORNIA FOR THE CITY AND COUNTY OF SAN FRANCISCO UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, Ph.D.,)
Plaintiff,) Case No. CGC-06-452796
vs.	STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT
DR. PEPPER BOTTLING COMPANY)
OF WEST JEFFERSON, NORTH)
CAROLINA, INCORPORATED; and)
DOES 1 through 150, inclusive,)
,)
Defendants.	·)

2	1.1 Whitney R. Leeman and Dr. Pepper Bottling Company			
3	This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D.,			
4	(Leeman or plaintiff) and defendant Dr. Pepper Bottling Company of West Jefferson, North			
5	Carolina, Inc., (Dr. Pepper or defendant) with Leeman and Dr. Pepper collectively referred to as the			
6	"parties."			
7	1.2 Plaintiff			
8	Leeman is an individual residing in Sacramento, California, who seeks to promote awareness			
9	of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous			
10	substances contained in consumer products.			
11	1.3 <u>Defendant</u>			
12	Dr. Pepper is a North Carolina corporation that employs ten or more persons.			
13	1.4 General Allegations			
14	Leeman contends that Dr. Pepper has packaged, distributed and/or sold in the State of			
15	California certain glass soda bottles with (a) colored artwork or designs containing lead on their			
16	exterior; (b) metal crown caps containing lead; and (c) liquid beverage containing lead within the			
17	bottle itself. Lead and cadmium are listed pursuant to the Safe Drinking Water and Toxic			
18	Enforcement Act of 1986, California Health & Safety Code §25249.6 et seq. (Proposition 65), to			
19	cause birth defects and other reproductive harm. Lead and cadmium shall be referred to herein as			
20	the "Listed Chemicals."			
21	1.5 <u>Product Description</u>			
22	The products that are covered by this Consent Judgment are glass soda bottles packaged by			
23	Dr. Pepper. Said products are referred to herein as the "Products."			
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STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT

1 1.

INTRODUCTION

1.6 Notice of Violation

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2	On March 17, 2006, Leeman served Dr. Pepper and various public enforcement agencies
3	with a document entitled "60-Day Notice of Violation" (Notice) that provided Dr. Pepper and such
4	public enforcers with notice of allegations that Dr. Pepper was in violation of California Health &
5	Safety Code §25249.6 for failing to warn consumers and customers that the Products that Dr.
6	Pepper sold exposed users in California to lead. Prior to the hearing on the motion for approval of
7	this Consent Judgment, Leeman will have served Dr. Pepper and the required public enforcement
8	agencies with documents, entitled "Supplemental Notice of Violation" (Supplemental Notice) that
9	provides Dr. Pepper and the public enforcers with notice of allegations that Dr. Pepper was also in
10	violation of Health & Safety Code §25249.6 for failing to warn individuals that Products it sold
11	expose individuals in California to cadmium in addition to lead. The definition of Listed Chemicals
12	shall not be deemed to include cadmium until the sixty-sixth (66th) day following the date of
13	issuance of the Supplemental Notice and shall not, as of that date, include cadmium as a Listed
14	Chemical if an authorized public prosecutor has, prior to that date, filed a Proposition 65

1.7 Complaint

17 On June 1, 2006, Leeman, acting in the public interest, filed a complaint (Complaint or 18 Action) in the Superior Court in and for the City and County of San Francisco against Dr. Pepper 19 Bottling Company of West Jefferson, North Carolina, Incorporated, and Does 1 through 150, 20 (Leeman v. Dr. Pepper Bottling Company of West Jefferson, North Carolina, Incorporated, San Francisco Superior Court Case No. CGC-06-452796) alleging violations of California Health & 21 22 Safety Code §25249.6 based on the alleged exposures to lead contained in the Products sold by Dr. 23 Pepper. If an authorized public prosecutor has not filed a Proposition 65 enforcement action as to the Products containing cadmium sixty five days following the date of issuance of the Supplemental 24 25 Notice, the Complaint against Dr. Pepper shall be deemed amended to include cadmium as a Listed 26 Chemical.

enforcement action as to allegations that the Products expose users to cadmium.

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1	1.8 No Admission		
2	Dr. Pepper denies the material factual and legal allegations contained in Leeman's Notice		
3	and Complaint, denies that it has sold products in California, and maintains that its products,		
4	including the Products defined in Section 1.5, have been and are in compliance with all laws.		
5	Nothing in this Consent Judgment shall be construed as an admission by Dr. Pepper of any fact,		
6	finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment		
7	constitute or be construed as an admission by Dr. Pepper of any fact, finding, conclusion, issue of		
8	law or violation of law, such being specifically denied by Dr. Pepper. However, this Section shall		
9	not diminish or otherwise affect the obligations, responsibilities and duties of Dr. Pepper under this		
10	Consent Judgment.		
11	1.9 <u>Consent to Jurisdiction</u>		
12	For purposes of this Consent Judgment only, the parties stipulate that this Court has		
13	jurisdiction over Dr. Pepper, limited to entry and enforcement of the provisions of this Consent		
14	Judgment.		
15	1.10 Effective Date		
16	For purposes of this Consent Judgment, the term "Effective Date" shall mean February 28,		
17	2007.		
18	2. <u>INJUNCTIVE RELIEF: REFORMULATION</u>		
19	2.1 Agreement to Sell Only Lead and Cadmium Free Products in the Future		
20	After the Effective Date, Dr. Pepper agrees that it will not sell, ship or offer to ship for sale		
21	in California any glass bottled soda Products, unless such Products are sold or shipped without any		
22	detectable lead and cadmium as defined below in sub-section 2.3.		
23	2.2 <u>Clear and Reasonable Warnings for Past Sales</u>		
24	Under Proposition 65, consumers in California have the right to be warned of chemicals		
25	known to the State to cause cancer or reproductive toxicity to which they are exposed. The Notice		
26	and Complaint allege that Dr. Pepper has sold and/or distributed Products without such a warning		

1	and, thereby, has exposed consumers and workers who have purchased or handled Products
2	containing lead and cadmium without receiving any such health hazard advisory.

Dr. Pepper will undertake good faith efforts to provide clear and reasonable warnings, pursuant to California Health & Safety Code §25249.6, for Products previously sold during the two years prior to the Effective Date. To comply with this portion of the injunction, the defendant will advise its known direct customers, as well as any retailers known to Dr. Pepper to have sold its Products within the last two years, that they may exchange, (without cost), any of the Products remaining in their possession for a lead-free soda alternative. This advice may be provided either through Dr. Pepper's Internet website, if it currently maintains one, through its current forms of advertising or mailings to its customers and known retailers, or through a direct mailing to its customers or known retailers (the advisory).

Dr. Pepper shall comply with this sub-section no later than April 1, 2007. On or before March 1, 2007, Dr. Pepper shall provide Leeman with a letter specifying the method that it will employ to provide the information required in this sub-section and the date that the advisory will begin to be disseminated.

2.3 Reformulation Standards - Lead and Cadmium Free Products

Products satisfying the conditions of Sections 2.3(a)-(c) are referred to as "Lead and Cadmium Free."

(a) For Products containing colored artwork or designs on the exterior of the soda bottle, the Product must utilize paints, decals, or other materials for colored artwork, designs or markings containing six one-hundredths of one percent (0.06%) lead by weight or less and/or forty-eight one-hundredths of one percent (0.48%) cadmium by weight or less as measured at Dr. Pepper's option, either before or after the material is fired onto (or otherwise affixed to) the Product, using a sample size of the materials in question measuring approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit of quantitation (as distinguished from detection) of less than

1	600 parts per million ("ppm"). For Products with decorations within the "Lip and Rim Area," the			
2	paints, decals, or other materials shall contain two one-hundredths of one percent (0.02%) lead by			
3	weight or less and/or eight one-hundredths of one percent (0.08%) cadmium by weight or less, as			
4	measured at Dr. Pepper's option, either before or after the material is fired onto (or otherwise affixed			
5	to) the Product, using a sample size of the materials in question measuring approximately 50-100			
6	mg and a test method of sufficient sensitivity to establish a limit of quantitation (as distinguished			
7	from detection) of less than 200 parts per million ("ppm"); and			
8	(b) For Products containing metal crown caps, the Product must utilize caps			
9	containing two one-hundredths of one percent (0.02%) lead by weight or less and/or eight one-			
10	hundredths of one percent (0.08%) cadmium by weight or less using a sample size of the materials			
11	in question measuring approximately 50-100 mg and a test method of sufficient sensitivity to			
12	establish a limit of quantitation (as distinguished from detection) of less than 200 parts per million			
13	("ppm"), unless the Listed Chemicals are embedded in a manner that it would not be reasonably			
14	anticipated that a user of the soda bottle would come into contact with the Listed Chemicals.			
15	(c) For soda, soda pop, all other liquids and/or drinks contained in the Products,			
16	and ingredients thereof (collectively "soda"), the soda shall contain a maximum level of 5 parts per			
17	billion ("ppb") lead by volume. Furthermore, Dr. Pepper agrees that any water used to rinse and/or			
18	clean the glass container of the Products shall contain a maximum level of 5 ppb lead by volume.			
19	3. MONETARY PAYMENTS			
20	3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)			
21	Pursuant to California Health & Safety Code Section 25249.7(b), Dr. Pepper shall pay			
22	\$40,000.00 in civil penalties, with such funds being made payable to "Hirst & Chanler LLP in Trust			
23	For Dr. Whitney R. Leeman," on or before February 28, 2007.			
24				
25	¹ "Lip and Rim Area" is defined as the exterior top 20 millimeters of the soda bottle.			
26				
7	5			

STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT

Payments s	shall be	forwarded	to the	following	address:
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HIRST & CHANLER LLP Attn: Proposition 65 Controller 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710

3.2 Apportionment of Penalties Received

All penalty monies received shall be apportioned by Leeman in accordance with California Health & Safety Code §25192, with 75% of these funds remitted by Leeman to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies retained by Leeman as provided by California Health & Safety Code §25249.12(d). Leeman shall bear all responsibility for apportioning and paying to the State of California the appropriate civil penalties paid in accordance with this Section.

3.3 Cy Pres Payments

As a *cy pres* remedy pursuant to the Office of the Attorney General's Regulations, Private Enforcement Final Regulation Title 11, California Code of Regulations (CCR) §3203(b), Dr. Pepper shall pay \$40,000.00 to be earmarked for the Cincinnati Children's Environmental Health Center at the Cincinnati Children's Hospital Medical Center, a charitable organization formed under section 501(c)(3) of the Internal Revenue Code. Such funds shall be used to further the study of low-level lead exposure and its adverse effects on children's intellectual abilities and behavioral problems. This *cy pres* payment shall be delivered on or before February 28, 2007, and be made payable to "Hirst & Chanler LLP In Trust for Dr. Whitney R. Leeman". Within sixty (60) days of the court approval of this Consent Judgment, Leeman shall transmit the funds to "Cincinnati Children's Environmental Health Center" (Federal Tax ID# 31-0833936) and deliver them to the following address:

1	Cincinnati Children's Environmental Health Center c/o Cincinnati Children Hospital Medical Center				
2	2800 Winslow Avenue, Mail Location 7035 Cincinnati, Ohio 45206				
3					
4	4. REIMBURSEMENT OF FEES AND COSTS				
5	The parties acknowledge that Leeman and her counsel offered to resolve this dispute without				
6	reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee				
7	issue to be resolved after the material terms of the agreement had been settled. Dr. Pepper then				
8	expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been				
9	finalized. The parties then attempted to (and did) reach an accord on the compensation due to				
10	Leeman and her counsel under the private attorney general doctrine codified at California Code of				
11	Civil Procedure §1021.5 and contractual principles of law for all work performed through the				
12	Court's approval of this agreement. Under the private attorney general doctrine, Dr. Pepper shall				
13	reimburse Leeman and her counsel for fees and costs incurred as a result of investigating, bringing				
14	this matter to Dr. Pepper's attention, litigating and negotiating a settlement in the public interest and				
15	seeking the Court's approval of the settlement agreement. Dr. Pepper shall pay Leeman and her				
16	counsel \$195,000.00 for all attorneys' fees, expert and investigation fees, litigation and related costs				
17	The payment shall be made payable to "Hirst & Chanler LLP" and shall be delivered on or before				
18	February 28, 2007, to the following address:				
19	HIRST & CHANLER LLP				
20	Attn: Proposition 65 Controller 2560 Ninth Street				
21	Parker Plaza, Suite 214 Berkeley, CA 94710				
22	5. <u>RELEASE OF ALL CLAIMS</u>				
23	5.1 Release of Dr. Pepper				
24	In further consideration of the promises and agreements herein contained, and for the				
25	payments to be made pursuant to Sections 3 and 4, Leeman, on behalf of herself, her past and				
26	current agents, representatives, attorneys, successors and/or assignees, and in the interest of the				

- 1 general public, hereby waives all rights to institute or participate in, directly or indirectly, any form
- 2 of legal action and releases all claims, including, without limitation, all actions, and causes of
- 3 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
- 4 losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees)
- of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"),
- 6 against Dr. Pepper. This release is limited to those claims that arise under Proposition 65, as such
- 7 claims relate to Dr. Pepper's alleged failure to warn about exposures to or identification of the
- 8 Listed Chemicals contained in the Products. The parties further understand and agree that this
- 9 release shall not extend to any other affiliated or unaffiliated entity that distributed, sold, or
- 10 otherwise utilized the Products in California.

5.2 Dr. Pepper's Release of Leeman

Dr. Pepper waives any and all claims against Leeman, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Leeman and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,

6. COURT APPROVAL

and/or with respect to the Products.

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all parties, in which event any monies that have been provided to Plaintiff, or her counsel pursuant to Section 3 and/or Section 4 above, shall be refunded within fifteen (15) days after receiving written notice from Dr. Pepper that the one-year period has expired.

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1	7.	SEVERABILITY	
2		If, subsequent to court approval of this Consent Judgment, any of the provisions of this	
3	Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions		
4	remai	ining shall not be adversely affected.	
5	8.	ATTORNEYS' FEES	
6		In the event that, after Court approval: (1) Dr. Pepper or any third party seeks modification	
7	of this Consent Judgment pursuant to Section 14 below; or (2) Leeman takes reasonable and		
8	neces	sary steps to successfully enforce the terms of this Consent Judgment, Leeman shall be entitled	
9	to her reasonable attorneys' fees and costs pursuant to CCP §1021.5.		
10	9.	GOVERNING LAW	
11		The terms of this Consent Judgment shall be governed by the laws of the State of California	
12	and a	pply within the State of California. In the event that Proposition 65 is repealed or is otherwise	
13	rendered inapplicable by reason of law generally, or as to the Products, then Dr. Pepper shall		
14	provide written notice to Leeman of any asserted change in the law, and shall have no further		
15	obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products		
16	are so affected.		
17	10.	NOTICES	
18		Unless specified herein, all correspondence and notices required to be provided pursuant to	
19	this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,		
20	(registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the		
21	other party at the following addresses:		
22	To Di	r. Pepper:	
23		Alan M. Ruley, Esq. BELL, DAVIS & PITT, P.A.	
24		100 N. Cherry Street Suite 600 Wington Solom NC 37101	
25		Winston-Salem, NC 27101	
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2	Proposition 65 Coordinator HIRST & CHANLER LLP		
3	2560 Ninth Street		
4	Parker Plaza, Suite 214 Berkeley, CA 94710-2565		
5	Any party, from time to time, may specify in writing to the other party a change of address to		
6	which all notices and other communications shall be sent.		
7	10.1 Notice of Subsequent Violation		
8	In the event that the plaintiff and/or her attorneys, agents, assigns or other persons acting in		
9	the public interest under Health & Safety Code Section 25249.7(d) identifies an alleged violation of		
10	Section 2 of this Consent Judgment, they shall notify Dr. Pepper of such alleged violation in writing		
11	via Certified Mail, Return Receipt Requested, such notice being sent as provided in this section of		
12	this Consent Judgment, within thirty (30) days of the date that the alleged violation was discovered.		
13	The notice shall identify the date that the alleged violation was discovered, and the nature of the		
14	alleged violation with sufficient details so as to allow Dr. Pepper to determine the basis of the		
15	alleged violation being claimed and the identities of the products involved. Dr. Pepper shall have		
16	thirty (30) days after receipt of notice of the alleged violation to investigate and take corrective		
17	action as appropriate with respect to such alleged violation before plaintiff may move to enforce the		
18	terms and conditions of this Consent Judgment. After thirty (30) days has passed from receipt of the		
19	notice, Dr. Pepper shall provide Dr. Leeman and her counsel identified in this section, in addition to		
20	the noticing party (if it is not Dr. Leeman and her counsel), with a declaration stating the results of		
21	its investigation, and what corrective efforts it has made, if any, to address the alleged violation.		
22	For purposes of the provisions of Section 2.1 of this Consent Judgment, the obligations therein shall		
23	apply only to Products sold, shipped or offered to be shipped for sale in California after the		
24	Effective Date.		
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10.2 Termination of Section 10.1

- 2 The terms of Section 10.1 to this Consent Judgment shall expire as to all parties on January
- 3 30, 2009.

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4 11. COUNTERPARTS; FACSIMILE SIGNATURES

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

8 12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

- 9 Leeman agrees to comply with the reporting form requirements referenced in Health &
- 10 Safety Code §25249.7(f).

11 13. ADDITIONAL POST EXECUTION ACTIVITIES

- 12 Leeman and Dr. Pepper agree to mutually employ their best efforts to support the entry of
- 13 this Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court
- 14 in a timely manner. The parties acknowledge that, pursuant to California Health & Safety Code
- 15 §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment.
- 16 Accordingly, the Plaintiff agrees to file a Motion to Approve the Agreement ("Motion").

17 14. MODIFICATION

- This Consent Judgment may be modified only: (1) by written agreement of the parties and
- 19 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
- 20 of any party and entry of a modified Consent Judgment by the Court. The Attorney General shall be
- 21 served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days
- 22 in advance of its consideration by the Court.

23 15. AUTHORIZATION

- The undersigned are authorized to execute this Consent Judgment on behalf of their
- 25 respective parties and have read, understood and agree to all of the terms and conditions of this
- 26 Consent Judgment.

	<u> </u>	
1 2	AGREED TO: Date: 4/1/07	AGREED TO: Date: 2-1-07
3 4 5	By: Withy eeman Plaintiff, WHYTNEY R. LEEMAN, Ph.D.	By Misher Money UP+0 Desendant DR. PEPIER BOYILING
6	APPROVED AS TO FORM:	APPROVED AS TO FORM:
7 8	Date: 2/1/07 HIRST & CHANLER LLP	Date: 2 / 07 BELL, DAVIS & PITT, P.A
9	By: Dowell, Esq. Attorneys for Plaintiff WHITNEY R. LEEMAN, Ph.D.	By: Alan M. Ruley, Esq. Anomeys for Defendant DR. PEPPER BOTTLING COMPANY
11 12	WHITNEY R. LEEWAN, FILD.	OF WEST JEFFERSON, NORTH CAROLINA, INCOPPORATED
13 ¹		
14 15	IT IS SO ORDERED.	
16	Date:	
17		JUDGE OF THE SUPERIOR COURT
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~~	STIPULATION AND IPROPOSED	ORDER RE: CONSENT JUDGMENT