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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.)	

1 **1. INTRODUCTION**

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 Defendant**

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 Product Description**

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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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.

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

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

16 **2.3 Reformulation Standards - Lead and Cadmium Free Products**

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

19 (a) For Products containing colored artwork or designs on the exterior of the
20 soda bottle, the Product must utilize paints, decals, or other materials for colored artwork, designs or
21 markings containing six one-hundredths of one percent (0.06%) lead by weight or less and/or forty-
22 eight one-hundredths of one percent (0.48%) cadmium by weight or less as measured at Dr. Pepper's
23 option, either before or after the material is fired onto (or otherwise affixed to) the Product, using a
24 sample size of the materials in question measuring approximately 50-100 mg and a test method of
25 sufficient sensitivity to establish a limit of quantitation (as distinguished from detection) of less than
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1 600 parts per million ("ppm"). For Products with decorations within the "Lip and Rim Area,"¹ 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.

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26 ¹"Lip and Rim Area" is defined as the exterior top 20 millimeters of the soda bottle.

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1 Cincinnati Children's Environmental Health Center
2 c/o Cincinnati Children Hospital Medical Center
3 2800 Winslow Avenue, Mail Location 7035
4 Cincinnati, Ohio 45206

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
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

22 **5. RELEASE OF ALL CLAIMS**

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)
5 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.

11 **5.2 Dr. Pepper's Release of Leeman**

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

17 **6. COURT APPROVAL**

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

23 Alan M. Ruley, Esq.
24 BELL, DAVIS & PITT, P.A.
25 100 N. Cherry Street
26 Suite 600
27 Winston-Salem, NC 27101

1 To Leeman:

2 Proposition 65 Coordinator
3 HIRST & CHANLER LLP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565

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

9 **10.1 Notice of Subsequent Violation**

10 In the event that the plaintiff and/or her attorneys, agents, assigns or other persons acting in
11 the public interest under Health & Safety Code Section 25249.7(d) identifies an alleged violation of
12 Section 2 of this Consent Judgment, they shall notify Dr. Pepper of such alleged violation in writing
13 via Certified Mail, Return Receipt Requested, such notice being sent as provided in this section of
14 this Consent Judgment, within thirty (30) days of the date that the alleged violation was discovered.

15 The notice shall identify the date that the alleged violation was discovered, and the nature of the
16 alleged violation with sufficient details so as to allow Dr. Pepper to determine the basis of the
17 alleged violation being claimed and the identities of the products involved. Dr. Pepper shall have
18 thirty (30) days after receipt of notice of the alleged violation to investigate and take corrective
19 action as appropriate with respect to such alleged violation before plaintiff may move to enforce the
20 terms and conditions of this Consent Judgment. After thirty (30) days has passed from receipt of the
21 notice, Dr. Pepper shall provide Dr. Leeman and her counsel identified in this section, in addition to
22 the noticing party (if it is not Dr. Leeman and her counsel), with a declaration stating the results of
23 its investigation, and what corrective efforts it has made, if any, to address the alleged violation.

24 For purposes of the provisions of Section 2.1 of this Consent Judgment, the obligations therein shall
25 apply only to Products sold, shipped or offered to be shipped for sale in California after the
26 Effective Date.

1 **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.

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**

18 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**

24 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.

<p>1 AGREED TO:</p> <p>2 Date: <u>2/1/07</u></p> <p>3</p> <p>4 By: <u>Whitney Leeman</u> Plaintiff, WHITNEY R. LEEMAN, Ph.D.</p> <p>5</p>	<p>AGREED TO:</p> <p>Date: <u>2-1-07</u></p> <p>By: <u>Michael D. Koney VP+GM</u> Defendant DR. PEPPER BOTTLING</p>
<p>6 APPROVED AS TO FORM:</p> <p>7 Date: <u>2/1/07</u> HIRST & CHANLER LLP</p> <p>8</p> <p>9 By: <u>George W. Dowell</u> George W. Dowell, Esq. Attorneys for Plaintiff WHITNEY R. LEEMAN, Ph.D.</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p>	<p>APPROVED AS TO FORM:</p> <p>Date: <u>2/1/07</u> BELL, DAVIS & PITT, P.A.</p> <p>By: <u>Alan M. Rulcy</u> Alan M. Rulcy, Esq. Attorneys for Defendant DR. PEPPER BOTTLING COMPANY OF WEST JEFFERSON, NORTH CAROLINA, INCORPORATED</p>

14 **IT IS SO ORDERED.**

15 Date: _____

16 _____
17 JUDGE OF THE SUPERIOR COURT