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RICH ON, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL DIVISION

WHITNEY R. LEEMAN, Ph.D., Plaintiff, v. RICH ON, INC.; and DOES 1 through 150, inclusive, Defendants.	Case No. RG 07321854 STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT

1. INTRODUCTION

1.1 Whitney R. Leeman, Ph.D. and Rich On, Inc.

This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D., ("Dr. Leeman" or "Plaintiff") and defendant Rich On, Inc., ("Rich On" or "Defendant"), with Dr. Leeman and Rich On referred to as the "Parties" and with Dr. Leeman and Rich On each being a "Party."

1.2 Dr. Leeman

Dr. Leeman is an individual residing in the State of California who seeks to promote awareness of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products.

1.3 Rich On

Rich On employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §25249.6 *et seq.* (Proposition 65).

1.4 General Allegations

Dr. Leeman alleges that Defendant has manufactured, distributed and/or sold cosmetic kits containing lead in the State of California without the requisite health hazard warnings. Lead is a substance known to cause birth defects and other reproductive harm and is listed pursuant to Proposition 65. Lead shall be referred to hereinafter as the "Listed Chemical."

1.5 Product Description

The products that are covered by this Consent Judgment are defined as follows: Cosmetic kits or products containing any combination of eye shadow, blush, powder, mascara, cream, gel, foundation, eyeliner, lipliner, pencils, lipstick (or lip gloss), brush, blusher tools, applicators, mirrors, and/or nail polish that contain lead including, but not limited to, *Cosmetic Kit #9611 by BR Cosmetics (#7 161890 096115) and item numbers G-M333, JC232, 019GR, E001, JC 170, 6603, 036C-G, 371-C, 1868, 682, 3625, JC 133, JC036C-1 and GZ701.* All such products shall be referred to hereinafter as the "Products."

///

1.6 Notice of Violation

On October 13, 2006, Dr. Leeman served Defendant and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (Notice) that provided Defendant and public enforcers with notice that alleged that Defendant was in violation of California Health & Safety Code §25249.6 for failing to warn consumers that the Products that Defendant sold exposed users in California to the Listed Chemical.

1.7 Complaint

On April 20, 2007, Dr. Leeman, who alleges she is acting in the interest of the general public in California, filed a complaint ("Complaint" or "Action") in the Superior Court in and for the County of Alameda against Rich On, Inc. and Does 1 through 150, (*Leeman v. Rich On, Inc., et al., Case #RG 07321854*) alleging violations of California Health & Safety Code §25249.6 based on the alleged exposures to the Listed Chemical contained in the Products sold by Defendant.

1.8 No Admission

Defendant denies the material factual and legal allegations contained in Dr. Leeman's Notice and Complaint and maintains that the Products it sold and distributed in California have been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact, finding, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Defendant. However, this Section shall not diminish or otherwise affect Defendant's obligations, responsibilities, and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Defendant as to the allegations contained in the Complaint, that venue is proper in the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

1.10 Effective Date

For purposes of this Consent Judgment, the term "Effective Date" shall mean January 15, 2008.

2. INJUNCTIVE RELIEF: WARNINGS AND REFORMULATION

2.1 Product Warnings

After the Effective Date, Defendant shall not sell, ship, or offer to be shipped for sale in California Products containing the Listed Chemical unless such Products are sold or shipped with one of the clear and reasonable warnings set forth in this Section 2.1, comply with the reformulation standards set forth in Section 2.3 or are otherwise exempt pursuant to Section 2.2. Defendant may satisfy its duty under this Consent Judgment by complying with any one or more of the three standards set by either Section 2.1, 2.2 or 2.3.

Any warning issued for Products pursuant to this Section 2.1 shall be prominently placed as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or, for Products shipped directly to an individual in California or used in the workplace, before use. Any warning issued pursuant to this Section 2.1 (a)-(b) shall be provided in a manner such that the consumer or used understands to which specific Product the warning applies, so as to minimize if not eliminate the chance that an overwarning situation will arise.

Sections 2.1(a)-(b) describe Defendant's options for satisfying its warning obligations depending, in part, on the manner of sale. Use of any one of the following warnings will satisfy the warning requirement set forth in this Section 2.1. The following warnings will be applicable when the Product is sold either to consumers or in a business-to-business transaction:

(a) Retail Store Sales.

(i) Product Labeling. From the Effective Date, a warning may be affixed to packaging, labeling, or directly on each Product sold in retail outlets by Defendant or its agents, that states:

> **WARNING:** This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

(ii) Point-of-Sale Warnings. Defendant may perform its warning obligations by ensuring that signs are posted at retail outlets in the State of California where the Products are sold. To the extent Defendant may sell Products to a retailer or distributor, in order to avail itself of point-of-sale option, Defendant shall provide a written notice (via certified mail in the first quarter of each calendar year) to each retailer or distributor to whom Defendant sells or transfers the Products directly, which informs such retailers or distributor that point-of-sale warnings are required at each retail location in the State of California. Defendant shall include a copy of the warning signs and posting instructions with such notice. Point-of-sale warnings shall be provided through one or more signs posted in close proximity to the point of display of the Products that states:

> **WARNING:** This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (*e.g.*, Reformulated Products as defined in section 2.2), the following statement must be used:[1]

> **WARNING:** The cosmetic components in the following products contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm.
>
> [*list of products for which warning is required*]

(b) Internet sales. Defendant shall satisfy its warning obligations for Products sold via the Internet to California residents by providing a warning: (i) on the website; or (ii) with the Product when it is shipped to an address in California.

(i) Internet Website Warning. A warning may be given in conjunction with the sale of the Product via the Internet, provided it appears either: (a) on the same web page on which the Product is displayed; (b) on the same web page as the order form for the

[1] For purposes of the Consent Judgment, "sold in proximity" shall mean that the Product and another product are offered for sale close enough to each other that the consumer under customary conditions, could not reasonably determine which of the two products is subject to the warning sign.

Product; (c) on the same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Product for which it is given in the same type size or larger as the Product description text:

> **WARNING:** This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

Alternatively, the designated symbol may appear adjacent to or immediately following the display, description, or price of the Product for which a warning is being given, provided that the following warning statement also appears elsewhere on the same web page:

> **WARNING:** Products identified on this page with the following symbol contain lead, a chemical known to the State of California to cause birth defects and other reproductive harm: ▽

(ii) Package Insert or Label Warning. For all Products sold via the Internet, a warning may be provided with the Product when it is shipped directly to an individual in California by either: (a) affixing the following warning language to the packaging, labeling, or directly to a specific Product; (b) inserting a warning card measuring at least 4" x 6" in the shipping carton which contains the following warning language; or (c) placing the following warning statement on the packing slip or customer invoice on the line directly below the description of the Product on the packing slip or customer invoice:

> **WARNING:** This product contains lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

2.2 <u>Exceptions to Warning Requirements</u>

The warning requirements set forth in Section 2.1 shall not apply to:

(i) Any Products received in inventory before the Effective Date; or

(ii) Reformulated Products (as defined in Section 2.3 below)

2.3 Reformulation Standards

Reformulated Product components are defined as follows: (1) any lipstick (and/or lipgloss) that contains less than or equal to 0.35 parts per million ("ppm") of lead; and (2) any other cosmetic item, including eye shadows and eyeliner that contain less than or equal to 0.50 parts per million ("ppm") of lead. The warnings required pursuant to Section 2.1 above shall not be required for Reformulated Products.

Defendant shall use Environmental Protection Agency ("EPA") testing methodology 6020 or 6010 to determine whether the respective levels have been exceeded in their Products. A modified test method may be used so long as the method is approved under 22 CCR §12900.

Rich On hereby commits that it will make its best efforts to ensure that the Products that it offers for sale in California after January 1, 2009 shall qualify as Reformulated Products as defined in this Section or shall otherwise be exempt from the warning requirements of Section 2.1.

For purposes of this Consent Judgment, "best efforts" shall mean, at a minimum, that Rich On will contact all of the upstream suppliers of its cosmetic kits via certified mail (or an international equivalent that requires the recipient to sign for delivery with confirmation provided to the sender) requesting that the products that it purchases or has manufactured and made for sale in California will be Reformulated Products. In the event that Rich On's existing upstream suppliers cannot provide such products, Rich On will seek alternative upstream suppliers and/or manufacturers to provide Reformulated Products for all orders that it reasonably believes will be ultimately offered for sale in California beginning on January 1, 2009.

In addition, best efforts shall mean, at a minimum, that Rich On will conduct its own periodic testing of samples of its cosmetic kits at a state (or federally) certified laboratory in the United States OR require that its manufacturers conduct periodic testing of samples of cosmetic kits shipped to Rich On and update such testing whenever new products are shipped to Rich On, and keep the results of such tests for at least two years.

3. MONETARY PAYMENTS

3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)

In settlement of this matter and without admitting any wrongdoing, Defendant agrees to pay the sum of $7,000, which shall be characterized and apportioned by Plaintiff as a payment pursuant to California Health & Safety Code §25249.7(b). All payments made pursuant to this Section 3.1 shall be payable to "HIRST & CHANLER LLP in Trust For Whitney R. Leeman, Ph.D." and shall be delivered within ten (10) calendar days after the Effective Date to Dr. Leeman's counsel at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

3.2 Apportionment of Penalties Received

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

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Dr. Leeman and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee and cost issue to be resolved after the material terms of the agreement had been settled. Defendant then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then reached an accord on the compensation due to Dr. Leeman and her counsel under the private attorney general doctrine codified at California Code of Civil Procedure §1021.5 for all work performed in reaching and finalizing this Consent Judgment. Under the private attorney general doctrine, Defendant shall reimburse Dr. Leeman and her counsel

for fees and costs incurred as a result of investigating, bringing this matter to Defendant's attention, and negotiating a settlement in the public interest. Defendant shall pay Dr. Leeman and her counsel $36,900 for all attorneys' fees, expert and investigation fees, litigation, and related costs. The payment shall be made payable to "HIRST & CHANLER LLP" and shall be delivered within ten (10) calendar days after the Effective Date to Dr. Leeman's counsel at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

5. RELEASE OF ALL CLAIMS

5.1 Dr. Leeman's Release of Defendant

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, Dr. Leeman on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, and as an enforcer of the public's interest in Proposition 65 pursuant to California Health & Safety Code § 25249.7(d), hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, 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"), against Defendant and each of its downstream customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, insurers and employees, and sister and parent entities (collectively "releasees") relating to the Products. This release includes those claims that arise under Proposition 65, claims that arise under any other applicable California regulations, and/or claims that arise from personal harm, to the extent that such claims relate to Defendant's alleged failure to warn about exposures to the Listed Chemical contained in the Products.

The Parties further understand and agree that this release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or

suppliers who sold the Products or any component parts thereof to Defendant.

5.2 Defendant's Release of Dr. Leeman

Defendant waives any and all claims against Dr. 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 Dr. Leeman and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Products identified in Section 1.5.

5.3 No Transfer of Claims

Dr. Leeman and Defendant hereto represent and warrant that she and it have not heretofore assigned or transferred, or purported to assign or transfer, to any person, firm or corporation whatsoever any claim, liability, demand, obligation, cost, expense, damage, action or cause of action herein released.

6. COURT APPROVAL

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 such an 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 Defendant that the one-year period has expired.

7. SEVERABILITY

If, subsequent to the execution of this Consent Judgment, any of the provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

8. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Product, then Defendant shall provide written notice to Dr. Leeman of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products

are so affected.

9. NOTICES

Unless specified herein, all correspondence and notices required to be provided pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the other Party at the following addresses:

To Defendant:	To Dr. Leeman:
Cheryl S. Chang Castellan Law Group, LLP 70 South Lake Ave., Suite 900 Pasadena, California 91101	Proposition 65 Coordinator HIRST & CHANLER LLP 2560 Ninth Street, Suite 214 Berkeley, CA 94710-2565

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

10. COUNTERPARTS; FACSIMILE SIGNATURES

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

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

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

12. ADDITIONAL POST EXECUTION ACTIVITIES

The Settling Parties shall mutually employ their best efforts to support the entry of this Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court before April 1, 2008. The Parties acknowledge that, pursuant to California Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, Plaintiff agrees to file a Motion to Approve the Agreement ("Motion"). Defendant shall have no additional responsibility to Plaintiff's counsel pursuant to Code of Civil Procedure §1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with respect to the preparation and filing of the Motion or with regard to Plaintiff's counsel appearing for a hearing thereon.

13. MODIFICATION

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

14. AUTHORIZATION

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

AGREED TO:	AGREED TO:
Date: 1/10/08	Date:
By: [signature] Plaintiff, WHITNEY R. LEEMAN, Ph.D.	By: Defendant, RICH ON, INC.
APPROVED AS TO FORM:	APPROVED AS TO FORM:
Date: 1/11/08	Date:
HIRST & CHANLER LLP	CASTELLAN LAW GROUP, LLP
By: [signature] David R. Bush, Esq. Attorneys for Plaintiff WHITNEY R. LEEMAN, Ph.D	By: Cheryl S. Chang, Esq. Attorneys for Defendant RICH ON, INC.

IT IS SO ORDERED.

Date: _____

_____
JUDGE OF THE SUPERIOR COURT

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

14. AUTHORIZATION

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

AGREED TO:	AGREED TO:
Date:_____	Date: 01/11/2008
By:_____ Plaintiff, WHITNEY R. LEEMAN, Ph.D.	By:_____ Defendant, RICH ON, INC.
APPROVED AS TO FORM:	APPROVED AS TO FORM:
Date:_____	Date: 1/11/08
HIRST & CHANLER LLP	CASTELLAN LAW GROUP, LLP
By:_____ David R. Bush, Esq. Attorneys for Plaintiff WHITNEY R. LEEMAN, Ph.D	By:_____ Cheryl S. Chang, Esq. Attorneys for Defendant RICH ON, INC.

IT IS SO ORDERED.

Date: _____

_____
JUDGE OF THE SUPERIOR COURT