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Attorneys for Defendant
ROSS STORES, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF ALAMEDA COUNTY

UNLIMITED CIVIL JURISDICTION

| | |
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| WHITNEY LEEMAN, PH.D.,<br>Plaintiff,<br>v.<br>ROSS STORES, INC.,<br>Defendant. | Case No.<br><br>**STIPULATION AND [PROPOSED] ORDER RE: CONSENT JUDGMENT** |

## 1. INTRODUCTION

1.1 **Whitney R. Leeman, Ph.D. and Ross Stores, Inc.** This Consent Judgment is entered into by and between Whitney R. Leeman, Ph.D., (Dr. Leeman) and Ross Stores, Inc., (Ross), with Dr. Leeman and Ross referred to as the "Parties" and with Dr. Leeman and Ross 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 **Ross.** Ross 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 Ross has 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.

1.5 **Product Description.** The products that are covered by this Consent Judgment ("Products") are cosmetic kits manufactured and/or distributed by Frenkel International Group Inc. that contain any combination of eye shadow, eyeliner, and/or lipstick (or lip gloss) such as the *Color Boutique By Classically Me Gift Set, (603 D1111 C5934)*.

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

1.7 **Complaint.** On October 9, 2007, Leeman, who is acting in the interest of the general public in California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the Superior Court in and for the County of Alameda against Ross, alleging

violations of Health & Safety Code §25249.6 based on the alleged exposures to lead contained in the Products sold by Ross.

1.8 **Exempt Supplier**. Based on the information available to it, Ross believes that Frenkel International Group, which supplied Ross with the Products, has fewer than ten employees and is not a person in the course of doing business under Proposition 65.

1.9 **Ross' Response to Notice of Violation**. Following issuance of the Notice, on October 13, 2006, Ross no longer offered any Products for sale in California.

1.10 **No Admission.** Ross denies the material factual and legal allegations contained in the Complaint and maintains that all Products that it has 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 Ross 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 Ross of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Ross. However, this Section shall not diminish or otherwise affect Ross' obligations, responsibilities, and duties under this Consent Judgment.

1.11 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Ross 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.

1.12 **Effective Date.** For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this agreement is fully executed by the parties.

## 2. INJUNCTIVE RELIEF

2.1 After the Effective Date, Ross shall neither sell Products, nor offer Products for sale, in California.

## 3. MONETARY PAYMENTS

3.1 Ross shall not be required to pay a civil penalty pursuant to Health and Safety Code Section 25249.7(b).

## 4. REIMBURSEMENT OF FEES AND COSTS

4.1 Ross shall reimburse Dr. Leeman and her counsel for fees and costs incurred as a result of investigating, bringing this matter to Ross' attention, and negotiating a settlement in the public interest. Ross shall pay Dr. Leeman and her counsel $18,000 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 thirty (30) days of the Effective Date 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 Ross.**

5.1.1 In further consideration of the promises herein contained, and for the payment to be made pursuant to Section 4.1, Dr. Leeman on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public, 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 Ross and its parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities, successors, and/or assigns (collectively "Releasees").

5.1.2 This Consent Judgment is a full, final, and binding resolution between Dr. Leeman and Ross, and its Releasees of any violation of Proposition 65, regarding exposure to lead arising in connection with the manufacture, sale, distribution, or use of Products sold by Ross and its Releasees prior to the Effective Date, or any claim based on the facts or conduct

alleged in the Complaint, or facts similar to those alleged, whether based on actions committed by Ross or its Releasees.

5.1.3 This release is limited to those claims that arise under Proposition 65, as such claims relate to Ross' alleged failure to warn about exposures to lead contained in the Products.

5.1.4 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 Ross.

5.2 **Ross' Release of Dr. Leeman.** Ross 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 it in this matter, and/or with respect to the Products.

## 6. COURT APPROVAL

6.1 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, in which event any monies that have been provided to Plaintiff, or her counsel pursuant to Section 4.1 above, shall be refunded to Ross.

## 7. ATTORNEYS' FEES

7.1 Except as specifically provided herein, each Party shall be responsible for its own attorney's fees, expert fees, investigative and other costs of litigation, and taxable costs.

7.2 In the event that, after Court approval, any dispute arises with respect to any provision of this Consent Judgment the prevailing Party shall be entitled to its reasonable attorneys' fees and costs.

## 8. GOVERNING LAW

8.1 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 Products, then Ross

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

9.1 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 Ross:

Mark LeHocky
Senior Vice President and General Counsel
Ross Stores, Inc.
4440 Rosewood Drive
Pleasanton, CA 94588

With a copy to:

Jeffrey B. Margulies
FULBRIGHT & JAWORSKI LLP
555 S. Flower Street, 41st Floor
Los Angeles, California 90071

To Dr. Leeman:

Proposition 65 Coordinator
HIRST & CHANLER LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710 2565

9.2 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

10.1 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. ADDITIONAL POST EXECUTION ACTIVITIES

11.1 Dr. Leeman and Ross agree to 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 in a timely manner. 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, Dr. Leeman agrees to file a Motion to Approve the Agreement ("Motion"). Ross shall have no additional responsibility to Dr. Leeman'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 Dr. Leeman's counsel appearing for a hearing thereon.

## 12. MODIFICATION

12.1 This Consent Judgment may be modified only upon written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon a motion of any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

## 13. ENTIRE AGREEMENT

13.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof and any and all prior discussions, negotiations, commitments and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

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**14. AUTHORIZATION**

14.1 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: 10/17/07 | Date: |
| By: WHITNEY R. LEEMAN, Ph.D. | By: ROSS STORES, INC. |
| **APPROVED AS TO FORM:** | **APPROVED AS TO FORM:** |
| Date: 10/18/2007 HIRST & CHANLER LLP | Date: FULBRIGHT & JAWORSKI LLP |
| By: George W. Dowell<br>Attorneys for Plaintiff<br>WHITNEY R. LEEMAN, Ph.D. | By: Jeffrey B. Margulies<br>Attorneys for Defendant<br>ROSS STORES, INC. |

## 14. AUTHORIZATION

14.1 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: 10/12/07 |
| By:_____<br>WHITNEY R. LEEMAN, Ph.D. | By:_____<br>ROSS STORES, INC. |
| **APPROVED AS TO FORM:** | **APPROVED AS TO FORM:** |
| Date:_____<br>HIRST & CHANLER LLP | Date: October 22, 2007<br>FULBRIGHT & JAWORSKI LLP |
| By:_____<br>George W. Dowell<br>Attorneys for Plaintiff<br>WHITNEY R. LEEMAN, Ph.D. | By:_____<br>Jeffrey B. Margulies<br>Attorneys for Defendant<br>ROSS STORES, INC. |



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