

1 Christopher M. Martin, State Bar No. 186021
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

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

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 ALAMEDA
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, Ph.D.,
Plaintiff,
v.
JT INTERNATIONAL DISTRIBUTORS,
INC.; and DOES 1-150, inclusive,
Defendants.

Case No. RG-15-756965
[PROPOSED] CONSENT JUDGMENT
(Health & Safety Code § 25249.6 *et seq.* and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman
4 (“Leeman”) and defendant JT International Distributors, Inc. (“JT International”), with Leeman and
5 JT International each referred to individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Leeman is a resident of the State of California who seeks to promote awareness of
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
9 substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 JT International employs ten or more persons and is a person in the course of doing business
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Leeman alleges that JT International manufactures, imports, sells and/or distributes for sale
16 in California, tool grips containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without
17 providing the health hazard warning that Leeman alleges is required by Proposition 65.

18 **1.5 Product Description**

19 The products covered by this Consent Judgment are tool grips containing DEHP, including,
20 but not limited to, the *Tough 1 Rotary Leather Punch, Item No. 76-1515, UPC #6 88499 15257 0*
21 (“Products”).

22 **1.6 Notice of Violation**

23 On July 30, 2014, Leeman served JT International and the requisite public enforcement
24 agencies with a 60-Day Notice of Violation (“Notice”), alleging that JT International violated
25 Proposition 65 when it failed to warn its customers and consumers in California that the Products
26 expose users to DEHP. To the best of the Parties’ knowledge, no public enforcer has commenced
27 and is diligently prosecuting an action to enforce the allegations set forth in the Notice.
28

1 **1.7 Complaint**

2 On February 2, 2015, Leeman commenced the instant action, naming JT International as a
3 defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.8 No Admission**

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

14 **1.9 Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over JT International as to the allegations contained in the Complaint, that venue is
17 proper in the County of Alameda, and that the Court has jurisdiction to enter and enforce the
18 provisions of this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure
19 section 664.6.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date that
22 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

23 **2. INJUNCTIVE SETTLEMENT TERMS**

24 Commencing October 1, 2015, and continuing thereafter, JT International shall only
25 manufacture for sale, or purchase for sale in California, Reformulated Products. For purposes of
26 this Consent Judgment, “Reformulated Products” are defined as Products with a maximum DEHP
27 concentration 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental
28

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

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

5 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
6 claims referred to in this Consent Judgment, JT International shall pay \$6,000 in civil penalties in
7 accordance with this Section. Each penalty payment will be allocated in accordance with California
8 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
9 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
10 penalty remitted to Leeman. Leeman’s counsel shall be responsible for remitting JT International’s
11 penalty payment(s) under this Consent Judgment to OEHHA.

12 **3.1.1 Initial Civil Penalty.** Within two days of the Effective Date, JT
13 International shall make an initial civil penalty payment of \$2,000. JT International shall provide
14 its payment in a single check made payable to “Whitney R. Leeman, Client Trust Account” to be
15 delivered to the address provided in Section 3.4, below.

16 **3.1.2 Final Civil Penalty.** On October 1, 2015, JT International shall make a final
17 civil penalty payment of \$4,000. Pursuant to title 11 California Code of Regulations, section
18 3203(c), Leeman agrees that the final civil penalty payment shall be waived in its entirety if, no
19 later than September 15, 2015, an officer of JT International provides Leeman with an original,
20 signed written certification that all of the Products it ships for sale or distributes for sale in
21 California as of the date if its certification are Reformulated Products, and that JT International will
22 continue to offer only Reformulated Products in California in the future. The option to certify early
23 reformulation in lieu of making the final civil penalty payment otherwise required by this Section is
24 a material term, and time is of the essence. JT International shall deliver its certificate, if any, to
25 Leeman’s counsel at the address provided in Section 3.4, below. In the event that JT International
26 does not timely certify its compliance or make the final civil penalty payment required by this
27 Section, the Parties agree that Leeman may file a motion or application seeking an order compelling
28 JT International’s compliance with this Section. If successful, the Parties further agree that

1 Leeman shall be entitled to his reasonable attorneys' fees and costs pursuant to general contract
2 principles and Code of Civil Procedure section 664.6.

3 **3.2 Reimbursement of Attorneys' Fees and Costs**

4 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute
5 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
6 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
7 the other settlement terms had been finalized, JT International expressed a desire to resolve
8 Leeman's fees and costs. The Parties then negotiated a resolution of the compensation due to
9 Leeman and her counsel under general contract principles and the private attorney general doctrine
10 codified at California Code of Civil Procedure § 1021.5. For all work performed through the
11 mutual execution of this agreement and the Court's approval of the same, but exclusive of fees and
12 costs on appeal, if any, JT International shall reimburse Leeman and her counsel \$27,500. JT
13 International's payment shall be due within two days of the Effective Date, and delivered to the
14 address in Section 3.4 in the form of a check payable to "The Chanler Group." The reimbursement
15 shall cover all fees and costs incurred by Leeman investigating, bringing this matter to JT
16 International's attention, litigating, and negotiating a settlement of the matter in the public
17 interest.

18 **3.3 Payments Held In Trust**

19 With the exception of the final civil penalty payment required by Section 3.1.2, JT
20 International shall deliver all payments required by this Consent Judgment to its counsel within
21 one week of the date that this agreement is fully executed by the Parties. JT International's
22 counsel shall confirm receipt of settlement funds in writing to Leeman's counsel and,
23 thereafter, hold the amounts paid in trust until such time as the Court grants the motion for
24 approval of the Parties' settlement contemplated by Section 5. Within two days of the
25 Effective Date, JT International's counsel shall deliver all settlement payments it has held in
26 trust to Leeman's counsel at the address provided in Section 3.4. In the event the final civil
27 penalty payment required by Section 3.1.2 becomes due prior to the Effective Date, the JT
28 International shall deliver the final civil penalty payment to its attorney to be held in trust until,

1 and disbursed within two days after, the Effective Date.

2 **3.4 Payment Address**

3 All payments required by this Consent Judgment shall be delivered to the following
4 address:

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

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Leeman’s Release of Proposition 65 Claims**

10 Leeman, acting on her own behalf and in the public interest, releases JT International and its
11 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
12 and attorneys (“Releasees”) and each entity to whom JT International directly or indirectly
13 distributes or sells the Products including, but not limited to, its downstream distributors,
14 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
15 (“Downstream Releasees”) for any violations arising under Proposition 65 for unwarned exposures
16 to DEHP from the Products manufactured, imported, distributed or sold by JT International prior to
17 the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment
18 constitutes compliance with Proposition 65 by JT International with respect to the alleged or actual
19 failure to warn about exposures to DEHP from Products manufactured, sold or distributed for sale
20 by JT International after the Effective Date.

21 **4.2 Leeman’s Individual Release of Claims**

22 Leeman, in her individual capacity only and *not* in her representative capacity, also provides
23 a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
24 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
25 attorneys’ fees, damages, losses, claims, liabilities and demands of Leeman of any nature, character
26 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
27

28

1 exposures to DEHP in Products manufactured, imported, distributed or sold by JT International
2 before the Effective Date.

3 **4.3 JT International's Release of Leeman**

4 JT International, on its own behalf and on behalf of its past and current agents,
5 representatives, attorneys, successors and/or assignees, hereby waives any and all claims against
6 Leeman and her attorneys and other representatives, for any and all actions taken or statements
7 made (or those that could have been taken or made) by Leeman and her attorneys and other
8 representatives in the course of investigating claims, seeking to enforce Proposition 65 against it in
9 this matter, or with respect to the Products.

10 **5. COURT APPROVAL**

11 This Consent Judgment is not effective until it is approved and entered by the Court and
12 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
13 after it has been fully executed by all Parties. Leeman and JT International agree to support the
14 entry of this agreement as a judgment, and to obtain the Court's approval of their settlement in a
15 timely manner. The Parties acknowledge that, pursuant to California Health and Safety Code
16 section 25249.7(f), a noticed motion is required for judicial approval of this Consent Judgment,
17 which motion Leeman shall draft and file and JT International shall support, appearing at the
18 hearing if so requested. If any third-party objection to the motion is filed, Leeman and JT
19 International agree to work together to file a reply and appear at any hearing. This provision is a
20 material component of the Consent Judgment and shall be treated as such in the event of a breach.

21 **6. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the State of California
23 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
24 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then JT
25 International may provide Leeman with written notice of any asserted change in the law, and shall
26 have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent
27 that, the Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve
28 JT International from its obligation to comply with any pertinent state or federal law or regulation.

1 **7. NOTICE**

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

6 To JT International:

7 Steven Loi, Esq.
8 Sanders Roberts & Jewett
9 1055 West 7th Street
10 Los Angeles, CA 90017

To Leeman:

Attn: Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

13 **8. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

14 This Consent Judgment may be executed in counterparts and by facsimile or portable
15 document format (pdf) signature, each of which shall be deemed an original and, all of which, when
16 taken together, shall constitute one and the same document.

17 **9. COMPLIANCE WITH REPORTING REQUIREMENTS**

18 Leeman and her counsel agree to comply with the reporting form requirements referenced in
19 California Health and Safety Code section 25249.7(f).

20 **10. MODIFICATION**

21 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
22 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
23 any party and the entry of a modified Consent Judgment by the Court thereon.

24 **11. AUTHORIZATION**

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

AGREED TO:

Whitney R. Leeman _____
WHITNEY R. LEEMAN Ph.D.

Dated: August 9, 2015

AGREED TO:

JT INTERNATIONAL DISTRIBUTORS,
INC.

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____

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

AGREED TO:

WHITNEY R. LEEMAN Ph.D.

Dated: _____

AGREED TO:



JT INTERNATIONAL DISTRIBUTORS,
INC.

By: Jack Sievers
(Print Name)

Its: President
(Title)

Dated: 8/12/15