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JINNY BEAUTY SUPPLY CO., INC.
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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 COUNTY OF MARIN
17 UNLIMITED CIVIL JURISDICTION
18

19 WHITNEY R. LEEMAN, PH.D.,
20 Plaintiff,
21 v.
22 JINNY BEAUTY SUPPLY CO., INC., *et al.*
23 Defendants.
24

Case No. CV1501355

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D.
4 (“Leeman”) and Jinny Beauty Supply Co., Inc. (“Jinny”), with Leeman and Jinny each individually
5 referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Leeman is an individual residing in California who seeks to promote awareness of exposures
8 to toxic chemicals and to improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Jinny**

11 Jinny employs ten or more individuals and is a “person in the course of doing business” for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code
13 § 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Leeman alleges that Jinny imports, sells, or distributes for sale in California vinyl/PVC
16 toiletry cases that contain di(2-ethylhexyl)phthalate (“DEHP”) without first providing the exposure
17 warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a chemical known
18 to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC toiletry cases containing
21 DEHP that are imported, sold, or distributed for sale in California by Jinny including, but not limited
22 to, the vinyl/PVC case component of the *Brittney Professional Comb Set, BR33012, UPC #6 93525*
23 *33012 9*, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On January 23, 2015, Leeman served Jinny, and the requisite public enforcement agencies
26 with a 60-Day Notice of Violation (“Notice”) alleging Jinny violated Proposition 65 by failing to
27 warn its customers and consumers in California of the health hazards associated with exposures to
28

1 DEHP from the Products. To the best of the Parties' knowledge, no public enforcer has commenced
2 and is diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On April 13, 2015, Leeman filed the instant action ("Complaint"), naming Jinny as a
5 defendant for the alleged violations of Health and Safety Code § 25249.6 that are the subject of the
6 Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

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

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
23 the motion for approval of the Consent Judgment is granted by the Court.

24 **2. INJUNCTIVE RELIEF: REFORMULATION**

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date and continuing thereafter, Jinny agrees to only
27 manufacture for sale, import for sale, or purchase for sale in or into California, "Reformulated
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1 Products.” For purposes of this Consent Judgment, “Reformulated Products” are Products containing
2 DEHP in a maximum concentration of 0.1 percent (1,000 parts per million) when analyzed pursuant
3 to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or equivalent
4 methodologies utilized by federal or state agencies for the purpose of determining DEHP content in a
5 solid substance.

6 **3. MONETARY SETTLEMENT TERMS**

7 **3.1 Civil Penalty Payments**

8 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all the claims referred
9 to in the Notice, Complaint, and this Consent Judgment, Jinny shall pay \$2,000 in civil penalties. The
10 civil penalty payment shall be allocated according to Health and Safety Code § 25249.12(c)(1) and
11 (d), with seventy-five percent (75%) of the funds paid to the California Office of Environmental
12 Health Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to
13 Leeman.

14 Jinny shall deliver its payment in a single check made payable to Whitney R. Leeman Ph.D.,
15 Client Trust Account.” Leeman’s counsel shall be responsible for delivering OEHHA’s portion of
16 any penalty payment made under this Consent Judgment.

17 **3.2 Reimbursement of Attorney’s Fees and Costs**

18 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
19 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
20 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
21 other settlement terms had been finalized, the Parties negotiated the compensation due to Leeman and
22 her counsel, under general contract principles and the private attorney general doctrine codified at
23 California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution of
24 this Consent Judgment and through court approval of the same, but exclusive of fees and costs on
25 appeal, if any. On or before the Effective Date, Jinny shall pay \$23,000 for all fees and costs
26 incurred by Leeman in investigating, bringing this matter to Jinny’s attention, litigating and
27 negotiating a settlement in the public interest.
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1 **3.3 Payment Timing; Payments Held in Trust**

2 All payments due under this Consent Judgment shall be held in trust until such time as the
3 Court approves the Parties' settlement. All payments due under this agreement shall be delivered
4 within five (5) days of the date this Consent Judgment is fully executed by the Parties and held in
5 trust by Jinny's counsel until the Court grants the motion for approval of this Consent Judgment,
6 contemplated by Section 5, below. Jinny's counsel shall confirm in writing to Leeman's counsel
7 when it receives Jinny's settlement payments, and, within five days of the Court's approval of this
8 Consent Judgment, Jinny's counsel shall deliver the civil penalty and attorneys' fee reimbursement
9 payments to Leeman's counsel to the address listed in Section 3.4, below.

10 **3.4 Payment Address**

11 All payments required by this Consent Judgment shall be delivered to:

12 The Chanler Group
13 Attn: Proposition 65 Controller
14 2560 Ninth Street
15 Parker Plaza, Suite 214
16 Berkeley, CA 94710

17 **4. CLAIMS COVERED AND RELEASED**

18 **4.1 Leeman's Public Release of Proposition 65 Claims**

19 Leeman, acting on her own behalf and in the public interest, releases Jinny and its parents,
20 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
21 attorneys, and each entity to whom Jinny sells or distributes the Products, including, but not limited
22 to, its downstream retailers, customers and distributors ("Releasees") from all claims for violations
23 arising under Proposition 65 pertaining to the failure to warn about exposures to DEHP from
24 Products sold or distributed for sale by Jinny prior to the Effective Date, as set forth in the Notice.
25 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
26 with respect to exposures to DEHP from Products sold or distributed for sale by Jinny after the
27 Effective Date.

28 **4.2 Leeman's Individual Release of Claims**

 Leeman, in her individual capacity only and *not* in her representative capacity, also provides a
release to Jinny and Releasees which shall be effective as a full and final accord and satisfaction, as a

1 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
2 claims, liabilities and demands of Leeman of any nature, character or kind, whether known or
3 unknown, suspected or unsuspected, arising out of alleged or actual exposures to DEHP in Products
4 sold or distributed for sale by Jinny before the Effective Date.

5 **4.3 Jinny's Release of Leeman**

6 Jinny, on its own behalf, and on behalf of its past and current agents, representatives,
7 attorneys, successors, and assignees, hereby waives any and all claims against Leeman and her
8 attorneys and other representatives, for any and all actions taken or statements made by Leeman and
9 her attorneys and other representatives, whether in the course of investigating claims, otherwise
10 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

11 **5. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and shall
13 be null and void if it is not approved and entered by the Court within one year after it has been fully
14 executed by the Parties, or within such additional time as the Parties may agree to in writing.

15 **6. SEVERABILITY**

16 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
17 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
18 adversely affected.

19 **7. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the state of California
21 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
22 rendered inapplicable by reason of law generally or as to the Products, then Jinny may provide
23 written notice to Leeman of any asserted change in the law, and shall have no further injunctive
24 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
25 so affected.

1 **8. 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 the following addresses:

5 For Jinny:

6 Eddie Jhin, President
7 Jinny Beauty Supply Co., Inc.
8 3587 Oakcliff Road
9 Atlanta, GA 30340

10 with a copy to:

11 Craig A. Livingston, Esq.
12 Livingston Law Firm
13 1600 South Main Street, Suite 280
14 Walnut Creek, CA 94596

15 For Leeman:

16 Proposition 65 Coordinator
17 The Chanler Group
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710-2565

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

27 **10. POST EXECUTION ACTIVITIES**

28 Leeman agrees to comply with the reporting form requirements referenced in Health and
Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
§ 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In furtherance
of obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their
counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their
settlement in a timely manner. For purposes of this Section, “best efforts” shall include, at a

1 minimum, cooperating on the drafting and filing of the necessary moving papers, supporting the
2 motion, and appearing at the hearing before the Court.

3 **11. MODIFICATION**

4 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
5 entry of a modified consent judgment thereon by the Court; or (ii) a successful motion or application
6 of any Party, and the entry of a modified consent judgment thereon by the Court.

7 **12. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
9 have read, understand, and agree to all of the terms and conditions contained herein.

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AGREED TO:

AGREED TO:

Date: 3/23/16

Date: _____

By: *Whitney Leeman*
WHITNEY R. LEEMAN, PH.D.

By: _____
(Print Name)

Its: _____
(Title)
JINNY BEAUTY SUPPLY CO., INC.

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11 **AGREED TO:**

AGREED TO:

12
13 Date: _____

Date: 3/23/16

14
15 By: _____
WHITNEY R. LEEMAN, PH.D.

By:  STEVEN FLSLWMAN
(Print Name)

16
17 Its: CHRO
(Title)
JINNY BEAUTY SUPPLY CO., INC.

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