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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF ALAMEDA
12 UNLIMITED CIVIL JURISDICTION
13

14 WHITNEY R. LEEMAN, PH.D.,

15 Plaintiff,

16 v.

17 DEE ZEE, INC.,

18 Defendant.
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Case No. RG16816698

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

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 Dee Zee, Inc. (“Dee Zee”), with Leeman and Dee Zee each individually referred to
5 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 Defendant**

11 Dee Zee 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 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

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

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC cables containing DEHP that
21 are imported, sold, or distributed for sale in California by Dee Zee (“Products”) including, but not
22 limited to, the cable component of the *DeeZee Portable Safe, UPC #0 19023 98201 9*.

23 **1.6 Notice of Violation**

24 On August 20, 2015, Leeman served Dee Zee, the California Attorney General, and all other
25 requisite public enforcers with a 60-Day Notice of Violation (“Notice”), alleging that Dee Zee
26 violated Proposition 65 by failing to warn its customers and consumers in California of the health
27 hazards associated with exposures to DEHP from the Products. No public enforcer has commenced
28 and is diligently prosecuting an action to enforce the violations alleged in the Notice.

1 **1.7 Complaint**

2 On May 23, 2016, Leeman filed the instant action (“Complaint”), naming Dee Zee as a
3 defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

4 **1.8 No Admission**

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

13 **1.9 Jurisdiction**

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

18 **1.10 Effective Date**

19 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
20 the Motion for Approval of the Consent Judgment is granted by the Court.

21 **2. INJUNCTIVE RELIEF: REFORMULATED PRODUCTS**

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

28 **3. MONETARY SETTLEMENT TERMS**

1 **3.1 Civil Penalty Payments**

2 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all the claims referred
3 to in the Notice, Complaint, and this Consent Judgment, Dee Zee shall pay \$8,000 in civil penalties.
4 Each civil penalty payment shall be allocated according to Health and Safety Code § 25249.12(c)(1)
5 and (d), with seventy-five percent (75%) of the penalty paid to the California Office of
6 Environmental Health Hazard Assessment (“OEHHA”), and the remaining twenty-five percent (25%)
7 of the penalty retained by Leeman. Leeman’s counsel shall be responsible for delivering OEHHA’s
8 portion of the penalty payment(s) made under this Consent Judgment.

9 **3.1.1 Initial Civil Penalty Payment**

10 Dee Zee shall make an initial civil penalty payment of \$2,000.

11 **3.1.2 Final Civil Penalty Payment**

12 On October 1, 2016, Dee Zee shall make a final civil penalty payment of \$6,000. Pursuant to
13 title 11 California Code of Regulations, § 3203(c), Leeman agrees that the final civil penalty payment
14 shall be waived in its entirety if, no later than September 15, 2016, an officer of Dee Zee provides
15 Leeman with a signed declaration certifying that all of the Products it is selling, shipping for sale, or
16 distributing for sale in California as of the date of its declaration are Reformulated Products as
17 defined by Section 2, and that Dee Zee will continue to offer only Reformulated Products for sale in
18 California in the future. Alternatively, Dee Zee may certify that it is not currently offering the
19 Products for sale in California but, in the event it decides to recommence sales, it agrees to only offer
20 Reformulated Products. The option to certify product reformulation (or a commitment to reformulate
21 future sales) in lieu of making the final civil penalty payment required by this Section is a material
22 term, and time is of the essence.

23 **3.2 Reimbursement of Attorney’s Fees and Costs**

24 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
25 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
26 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
27 other settlement terms had been finalized, the Parties negotiated the compensation due to Leeman and
28 her counsel under general contract principles and the private attorney general doctrine codified at

1 California Code of Civil Procedure § 1021.5. Accordingly, Dee Zee agrees to pay \$25,000 in the
2 form of a check made payable to “The Chanler Group” for all fees incurred investigating, bringing
3 this matter to Dee Zee’s attention, negotiating a settlement in the public interest, and obtaining court
4 approval of the same.

5 **3.3 Payment Timing; Payments Held in Trust**

6 All payments due under this Consent Judgment shall be tendered to Dee Zee’s counsel
7 within fifteen (15) days of the date that this agreement is fully executed by the Parties, and held in
8 trust until the Effective Date. Dee Zee’s counsel shall provide Leeman’s counsel with written
9 confirmation following its receipt of the settlement funds, and within five days of the Court’s
10 approval of this Consent Judgment, deliver such funds to Leeman. In the event the final civil
11 penalty payment required by Section 3.1.2 is not waived and becomes due prior to the Effective
12 Date, Dee Zee shall deliver the penalty payment to its counsel to hold in trust until, and disburse
13 within five days after the Effective Date.

14 **3.4 Payment Address**

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

16 The Chanler Group
17 Attn: Proposition 65 Controller
18 2560 Ninth Street
19 Parker Plaza, Suite 214
20 Berkeley, CA 94710

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Leeman’s Public Release of Proposition 65 Claims**

23 Leeman, acting on her own behalf and in the public interest, releases Dee Zee and its
24 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
25 and attorneys (“Releasees”), and each entity to whom Dee Zee directly or indirectly distributes or
26 sells the Products including, without limitation, its downstream customers, distributors, wholesalers,
27 retailers and on-line retailers (“Downstream Releasees”) for any violation arising under Proposition
28 65 pertaining to the failure to warn about exposures to DEHP from Products sold or distributed for
sale by Dee Zee prior to the Effective Date, as set forth in the Notice. Compliance with the terms of
this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to

1 DEHP from Products sold or distributed for sale by Dee Zee after the Effective Date.

2 **4.2 Leeman’s Individual Release of Claims**

3 Leeman, in her individual capacity only and *not* in her representative capacity, also provides a
4 release to Dee Zee, Releasees, and Downstream Releasees which shall be effective as a full and final
5 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
6 attorneys’ fees, damages, losses, claims, liabilities and demands of Leeman of any nature, character
7 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
8 exposures to DEHP in Products manufactured, sold or distributed for sale by Dee Zee prior to the
9 Effective Date.

10 **4.3 Dee Zee’s Release of Leeman**

11 Dee Zee, on its own behalf, and on behalf of its past and current agents, representatives,
12 attorneys, successors, and assignees, hereby waives any and all claims against Leeman and her
13 attorneys and other representatives, for any and all actions taken or statements made by Leeman and
14 her attorneys and other representatives, whether in the course of investigating claims, otherwise
15 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

16 **5. COURT APPROVAL**

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

20 **6. SEVERABILITY**

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

24 **7. GOVERNING LAW**

25 The terms of this Consent Judgment shall be governed by the laws of the state of California
26 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
27 rendered inapplicable by reason of law generally or as to the Products, then Dee Zee may provide
28 written notice to Leeman of any asserted change in the law, and shall have no further injunctive

1 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
2 so affected.

3 **8. NOTICE**

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

7 For Dee Zee:

8 Kelli Gallagher, President
9 Dee Zee, Inc.
10 1572 NE 58th Avenue
11 Des Moines, IA 50313

12 with a copy to Dee Zee's counsel:

13 Sandra A. Edwards, Esq.
14 Farella Braun + Martel LLP
15 Russ Building
16 235 Montgomery Street, 17th Floor
17 San Francisco, California 94104

18 For Leeman:

19 Proposition 65 Coordinator
20 The Chanler Group
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710-2565

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

26 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

10. POST EXECUTION ACTIVITIES

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

1 of obtaining such approval, the Parties agree to mutually employ their best efforts, and those of their
2 counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of their
3 settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a
4 minimum, cooperating on the drafting and filing of the necessary moving papers, supporting the
5 motion, and appearing at the hearing before the Court.

6 **11. MODIFICATION**

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

10 **12. AUTHORIZATION**

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

13
14 **AGREED TO:**

15 Date: 6/29/16

16
17 By: Whitney Leeman
18 WHITNEY R. LEEMAN, PH.D.

14 **AGREED TO:**

15 Date: 6.28.16

16
17 By: Kelli Gallagher
18 Kelli Gallagher, President
19 DEE ZEE, INC.