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

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D.,
Plaintiff,
v.
LAROSE INDUSTRIES LLC; and DOES
1-150, inclusive,
Defendants.

Case No. RG-16-811417
[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 PH.D., (“Leeman”) and defendant LAROSE INDUSTRIES LLC (“LaRose”), with Leeman and
5 LaRose 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 LaRose employs ten or more persons and is a person in the course of doing business for
12 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 LaRose manufactures, imports, sells and/or distributes for sale in
16 California, vinyl/PVC speaker cords containing Di(2-ethylhexyl)phthalate (“DEHP”). DEHP is
17 listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive
18 harm. Leeman alleges that LaRose failed to provide the health hazard warning allegedly required
19 by Proposition 65 for exposures to DEHP from its vinyl/PVC speaker cords.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are vinyl/PVC speaker cords containing
22 DEHP sold and/or distributed for sale in California by LaRose including, but not limited to, *My*
23 *Look Cra-Z-Art Crazy Lights Magic Water Speakers, #46590, BDIP-004814A27-0414, UPC #8*
24 *84920 46590 9* (“Products”).

25 **1.6 Notice of Violation**

26 On August 20, 2015, Leeman served LaRose and certain requisite public enforcement
27 agencies with a 60-Day Notice of Violation (“Notice”), alleging that LaRose violated Proposition
28 65 when it failed to warn its customers and consumers in California that the Products expose users

1 to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is
2 diligently prosecuting an action to enforce the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On April 13, 2016, Leeman commenced the instant action, naming LaRose as a defendant
5 for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

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

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over LaRose as to the allegations contained in the Complaint, that venue is proper in the
18 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
19 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure 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 **2.1 Reformulation Commitment**

25 On or before the Effective Date and continuing thereafter, LaRose agrees to only
26 manufacture for sale or purchase for sale in or into California, "Reformulated Products" or Products
27 that contain a warning in accordance with Section 2.2 below. For purposes of this Settlement
28 Agreement, "Reformulated Products" are Products containing DEHP in concentrations less than

1 1,000 parts per million (“ppm”) (0.1%) when analyzed pursuant to U.S. Environmental Protection
2 Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state
3 governmental agencies for the purpose of determining DEHP content in a solid substance.

4 **2.2 Clear and Reasonable Warnings**

5 On or before the Effective Date, LaRose shall, for all Products it ships, sells, or offers to
6 ship or sell in California that are not Reformulated Products, provide clear and reasonable warnings
7 as set forth below. Each warning shall be prominently placed with such conspicuousness, as
8 compared with other words, statements, designs, or devices, as to render it likely to be read and
9 understood by an ordinary individual under customary conditions before purchase or use. Each
10 warning shall be provided in a manner such that the consumer or user understands to which specific
11 Products the warning applies, so as to minimize the risk of consumer confusion. The warning shall
12 be affixed to the packaging or labeling or directly to the non-Reformulated Product. The warning
13 shall provide:

14 **WARNING:** This product contains DEHP, a chemical known to the State [of
15 California] to cause birth defects and other reproductive harm.

16 Or, if LaRose has a good faith belief that the Product contains additional
17 listed chemicals that are listed as carcinogens, the warning may provide:

18
19 **WARNING:** This product can expose you to chemicals including [name of
20 one or more chemicals], which is [are] known to the State of
21 California to cause cancer, and [name of one or more
22 chemicals], which is [are] known to the State of California to
23 cause birth defects or other reproductive harm. For more
24 information go to www.P65Warnings.ca.gov

23 **3. MONETARY SETTLEMENT TERMS**

24 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

25 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims
26 referred to in this Consent Judgment, LaRose shall pay \$2,000 in civil penalties in accordance with
27 this Section. The penalty payment will be allocated in accordance with California Health & Safety
28 Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of

1 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
2 remitted to Leeman. Leeman’s counsel shall be responsible for remitting LaRose’s penalty
3 payment(s) under this Consent Judgment to OEHHA.

4 **3.2 Reimbursement of Attorneys’ Fees and Costs**

5 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute
6 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
7 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
8 the other settlement terms had been finalized, LaRose expressed a desire to resolve Leeman’s fees
9 and costs. The Parties then negotiated a resolution of the compensation due to Leeman and her
10 counsel under general contract principles and the private attorney general doctrine codified at
11 California Code of Civil Procedure § 1021.5. For all work performed through the mutual
12 execution of this agreement and the Court’s approval of the same, but exclusive of fees and costs
13 on appeal, if any, LaRose shall reimburse Leeman and her counsel \$23,000. LaRose’s payment
14 shall be delivered to the address in Section 3.4 in the form of a check payable to “The Chanler
15 Group.” The reimbursement shall cover all fees and costs incurred by Leeman investigating,
16 bringing this matter to LaRose’s attention, litigating, and negotiating a settlement of the matter
17 in the public interest.

18 **3.3 Payment Timing; Payments Held In Trust**

19 LaRose shall deliver all payments required by this Consent Judgment to its counsel
20 within one week of the date that this agreement is fully executed by the Parties. LaRose’s
21 counsel shall confirm receipt of settlement funds in writing to Leeman’s counsel and,
22 thereafter, hold the amounts paid in trust until such time as the Court grants the motion for
23 approval of the Parties’ settlement contemplated by Section 5. Within two days of the
24 Effective Date, LaRose’s counsel shall deliver all settlement payments it has held in trust to
25 Leeman’s counsel at the address provided in Section 3.4.

26 **3.4 Payment Address**

27 All payments required by this Consent Judgment shall be delivered to the following
28 address:

1 The Chanler Group
2 Attn: Proposition 65 Controller
3 2560 Ninth Street
4 Parker Plaza, Suite 214
5 Berkeley, CA 94710

6 **4. CLAIMS COVERED AND RELEASED**

7 **4.1 Leeman’s Release of Proposition 65 Claims**

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

18 **4.2 Leeman’s Individual Release of Claims**

19 Leeman, in her individual capacity only and *not* in her representative capacity, also provides
20 a release to Defendants, Releasees, and Downstream Releasees which shall be effective as a full and
21 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
22 attorneys’ fees, damages, losses, claims, liabilities and demands of Leeman of any nature, character
23 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
24 exposures to DEHP in Products manufactured, imported, distributed or sold by LaRose before the
25 Effective Date.

26 **4.3 LaRose’s Release of Leeman**

27 LaRose, on its own behalf and on behalf of its past and current agents, representatives,
28 attorneys, successors and/or assignees, hereby waives any and all claims against Leeman and her
attorneys and other representatives, for any and all actions taken or statements made by Leeman and

1 her attorneys and other representatives in the course of investigating claims, seeking to enforce
2 Proposition 65 against it in this matter, or with respect to the Products.

3 **5. COURT APPROVAL**

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

14 **6. SEVERABILITY**

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

18 **7. GOVERNING LAW**

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

25 **8. NOTICE**

26 Unless specified herein, all correspondence and notice required to be provided pursuant to
27 this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class,
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1 registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any
2 Party by the other at the following addresses:

3 **For LaRose:**

4 Lawrence Rosen, President
5 LaRose Industries LLC
6 1578 Sussex Turnpike, Building 5
7 Randolph, NJ 07869

For Leeman:

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

8 **with copy to LaRose's counsel:**

9 Anthony J. Cortez, Esq.
10 Greenberg Traurig LLP
11 1200 K Street, Suite 1100
12 Sacramento, CA 95814

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

15 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

19 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

22 **11. MODIFICATION**

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

26 **12. AUTHORIZATION**

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

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AGREED TO:



WHITNEY B. LEEMAN PH.D.

Dated: 4/4/2017

AGREED TO:

LAROSE INDUSTRIES LLC

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____

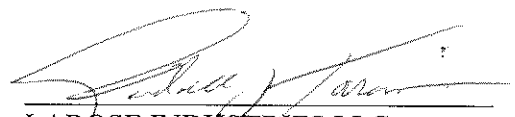
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AGREED TO:

WHITNEY R. LEEMAN PH.D.

Dated: _____

AGREED TO:



LAROSE INDUSTRIES LLC

By: Randall J. Tanino
(Print Name)

Its: C.O.O.
(Title)

Dated: 4/10/17