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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SANTA CLARA
11 UNLIMITED CIVIL JURISDICTION
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15 WHITNEY R. LEEMAN, PH.D.,

16 Plaintiff,

17 v.

18 DISSTON COMPANY; *et al.*,

19 Defendants.
20

Case No. 16CV290724

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.5 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Whitney R. Leeman, Ph.D.
4 (“Leeman”) and Disston Company (“Disston”), with Leeman and Disston each individually referred
5 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 improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Disston 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, Health and Safety Code
13 section 25249.6 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

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

19 **1.5 Product Description**

20 The Disston products that are covered by this Consent Judgment are defined as vinyl/PVC
21 extension cords containing DEHP, specifically, *Capewell 12 Foot Auto Extension Cord, #0100,*
22 *E0130100, UPC #0 35781 30100 8*, which are manufactured, imported, distributed, sold and/or
23 offered for sale by Disston in the State of California, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On or about September 15, 2015, Leeman served Disston, others, and certain requisite public
26 enforcement agencies with a 60-Day Notice of Violation (“Notice”) alleging that Disston was in
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1 violation of Proposition 65 for failing to warn its customers and consumers in California that the
2 Products expose users to DEHP.

3 **1.7 Complaint**

4 On January 25, 2016, Leeman filed the instant action (“Complaint”), naming Disston as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Disston as to the allegations in the Complaint, that venue is proper in the County of
19 Santa Clara, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
20 Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the date which this
23 Court approves the Consent Judgment, including any unopposed tentative rulings.

24 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date, and continuing thereafter, Disston shall only purchase for
27 sale, manufacture for sale, import, sell, or distribute for sale in California “Reformulated Products,”
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1 or Products that are sold with a clear and reasonable warning pursuant to Section 2.2 below. For
2 purposes of this Consent Judgment, “Reformulated Products” are products that contain DEHP in
3 concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.
4 Environmental Protection Agency testing methodologies 3580A and 8270C or any other
5 methodology utilized by federal or state agencies for the purpose of determining the DEHP content in
6 a solid substance. In addition to the EPA test methods authorized above, the Parties may utilize
7 equivalent methodologies employed by state or federal agencies to determine DEHP content in a
8 solid substance.

9 **2.2 Product Warnings**

10 Commencing on the Effective Date, Disston shall provide clear and reasonable warnings for
11 all Products as set forth in subsections 2.2(a) and (b) for all products that do not currently have
12 warnings and that do not qualify as Reformulated Products. Each warning shall be prominently
13 placed with such conspicuousness as compared with other words, statements, designs, or devices as
14 to render it likely to be read and understood by an ordinary individual under customary conditions
15 before purchase or use. Each warning shall be provided in a manner such that the consumer or user
16 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
17 confusion.

18 **(a) Retail Store Sales.**

19 **(i) Product Labeling.** Disston shall affix a warning to the packaging, labeling,
20 or directly on each Product provided for sale in retail outlets in California that states:

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

23 Or,

24 **WARNING:** This product contains a chemical
25 known to the State of California to cause cancer
and birth defects and other reproductive harm.

26 **(ii) Point-of-Sale Warnings.** Alternatively, Disston may provide warning signs in
27 the form below to its customers in California with instructions to post the warnings in close proximity
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1 internet shall identify the *specific* Product to which the warning applies as further specified in
2 Sections 2.2(b)(i) and (ii).

3 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order catalog
4 shall be in the same type size or larger than the Product description text within the catalog. The
5 following warning shall be provided on the same page and in the same location as the display and/or
6 description of the Product:

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

9 Or,

10 **WARNING:** This product contains a chemical
11 known to the State of California to cause cancer
and birth defects and other reproductive harm.

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13 Where it is impracticable to provide the warning on the same page and in the same location as
14 the display and/or description of the Product, Disston may utilize a designated symbol to cross
15 reference the applicable warning and shall define the term "designated symbol" with the following
16 language on the inside of the front cover of the catalog or on the same page as any order form for the
17 Product(s):

18 **WARNING:** Certain products identified with this symbol ▼
19 and offered for sale in this catalog contain DEHP,
a chemical known to the State of California to cause
birth defects and other reproductive harm.

20 Or,

21 **WARNING:** Certain products identified with this symbol ▼
22 and offered for sale in this catalog contain
23 a chemical known to the State of California to cause
cancer and birth defects and other reproductive harm.

24 The designated symbol must appear on the same page and in close proximity to the display
25 and/or description of the Product. On each page where the designated symbol appears, Disston must
26 provide a header or footer directing the consumer to the warning language and definition of the
27 designated symbol.

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1 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
2 Assessment (“OEHHA”) and twenty-five percent (25%) of the funds remitted to Leeman.

3 **3.1.1 Initial Civil Penalty**

4 Within fifteen (15) days of the date that this Consent Judgment is mutually executed,
5 Disston shall issue a check for its initial civil penalty payment in the amount of \$7,500 to its counsel
6 of record, John L. Sun, Esq. John L. Sun, Esq. shall provide The Chanler Group with written
7 confirmation within five days of receipt that the funds have been deposited in a trust account. Within
8 five (5) days of the Effective Date by the Court, Counselor Sun shall issue a check for the initial civil
9 penalty payment to “Whitney R. Leeman, Client Trust Account.” Leeman and her counsel will
10 ensure that the appropriate 75% is delivered to OEHHA.

11 **3.1.2 Final Civil Penalty**

12 On or before October 1, 2016, Disston shall make a final civil penalty payment of
13 \$20,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Leeman agrees that the
14 final civil penalty payment shall be waived in its entirety if, no later than September 15, 2016, an
15 officer of Disston provides Leeman with written certification that all of the Products purchased for
16 sale or manufactured for sale in California as of the date of such certification are Reformulated
17 Products as defined by Section 2.1, and that Disston will continue to offer only Reformulated
18 Products in California in the future. The option to certify reformulation in lieu of making the final
19 civil penalty payment required by this Section is a material term and time is of the essence.

20 **3.2 Reimbursement of Fees and Costs**

21 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
22 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
23 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
24 other settlement terms had been finalized, Disston expressed a desire to resolve Leeman’s fees and
25 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman
26 and her counsel under general contract principles and the private attorney general doctrine codified at
27 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
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1 execution of this Consent Judgment. Disston shall, within fifteen (15) days of the date that this
2 Consent Judgment is mutually executed, issue a check payable to John L. Sun, Esq., in the amount of
3 fees and costs of \$26,000 to be held in trust by John L. Sun, Esq. for The Chanler Group. John L.
4 Sun, Esq. shall provide The Chanler Group with written confirmation within five days of receipt that
5 the funds have been deposited in a trust account. Within five (5) days of the Effective Date, John L.
6 Sun, Esq., shall issue a check payable to "The Chanler Group" to the address found in Section 3.3.1
7 below.

8 **3.3 Payment Procedures**

9 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
10 this Consent Judgment are to be delivered within fifteen (15) days of the date that this Consent
11 Judgment is mutually executed, to John L. Sun, Esq., and released to The Chanler Group and
12 Leeman within five (5) days of the Effective Date according to the following subsections.

13 **3.3.1 Payment Addresses**

14 (a) All payments and tax documentation for Leeman and her counsel shall be
15 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 Disston and its parents,
24 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
25 attorneys ("Releasees") and each entity to whom it directly or indirectly distributes or sells the
26 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,
27 franchisers, cooperative members, licensors, and licensees, ("Downstream Releasees") for
28 violations arising under Proposition 65 for unwarned exposures to DEHP from the Products sold by
Disston prior to the Effective Date, as set forth in the Notice.

1 **4.2 Leeman’s Individual Release of Claims**

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

9 **4.3 Disston’s Release of Leeman**

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

15 **5. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and shall
17 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
18 has been fully executed by the Parties.

19 **6. SEVERABILITY**

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

23 **7. GOVERNING LAW**

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

4 **8. NOTICE**

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

8 For Disston:

9 John L. Sun, Esq.
10 Law Offices of John L. Sun
11 10724 Bridger Way
12 Tustin, CA 92782

13 For Leeman:

14 The Chanler Group
15 Attn: Proposition 65 Coordinator
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710

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

21 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

25 **10. POST EXECUTION ACTIVITIES**

26 Leeman agrees to comply with the reporting form requirements referenced in Health and
27 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
28 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
furtherance of obtaining such approval, Leeman and Disston agree to mutually employ their best
efforts, and that 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"

1 shall include, at a minimum, cooperating with the drafting and filing of the necessary moving papers.
2 and supporting the motion for judicial approval.

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 by the Court; or (ii) a successful motion or application of any
6 Party, and the entry of a modified consent judgment by the Court.

7 **12. AUTHORIZATION**

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

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AGREED TO:

AGREED TO:

Date: 3/24/16

Date: _____

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

By: _____
Stephen Chen, Chief Executive Officer
DISSTON COMPANY

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2 and supporting the motion for judicial approval.

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11 **AGREED TO:**

AGREED TO:

12 Date: _____

12 Date: 3-29-16

13
14 By: _____
15 WHITNEY R. LEEMAN, PH.D.

14 By: 
15 Stephen Chen, Chief Executive Officer
16 DISSTON COMPANY

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