

1 Clifford A. Chanler, State Bar No. 135534
2 Christopher Tuttle, State Bar No. 264545
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 848-8118

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

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13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SANTA CLARA
15 UNLIMITED CIVIL JURISDICTION
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18 WHITNEY R. LEEMAN, PH.D.,

19 Plaintiff,

20 v.

21 ALLSOP, INC., *et al.*,

22 Defendants.
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Case No. 16CV291434

[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 Whitney R. Leeman, Ph.D.
4 (“Leeman”) and Allsop, Inc. (“Allsop”), with Leeman and Allsop each individually referred to as a
5 “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 Allsop 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 Allsop manufactures, imports, sells, or distributes for sale in California,
16 earphone components that contain di(2-ethylhexyl) phthalate (“DEHP”) without first providing the
17 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 or other reproductive harm.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are earphone components containing DEHP
21 that are manufactured, imported, sold, or distributed for sale in California by Allsop including, but
22 not limited to, the *Gaiam Flatwire Earbuds*, *PRPL FLTWR EARBUDS*, *UPC #0 35286 30763 5* and
23 *GRN FLTWR EARBUDS*, *UPC #0 35286 0642* hereinafter the “Products.”

24 **1.6 Notices of Violation**

25 On December 1, 2015, Leeman served Allsop and the requisite public enforcement agencies
26 with a “60-Day Notice of Violation” (“Notice”) alleging that Allsop violated Proposition 65 by
27 failing to warn its customers and consumers in California of the health hazards associated with
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1 exposures to DEHP from the Products. To the best of the Parties' knowledge, no public enforcer has
2 commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On February 10, 2016, Leeman filed the instant action ("Complaint"), naming Allsop 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 Allsop denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and it maintains that all of the products that it has sold and distributed for sale in
10 California, including the Products, have been and are in compliance with all laws. Nothing in this
11 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
12 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
13 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This
14 Section shall not, however, diminish or otherwise affect Allsop's obligations, responsibilities, and
15 duties under 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 Allsop as to the allegations contained in the Complaint, that venue is proper in the
19 County of Santa Clara, 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 section 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 Court approves this Consent Judgment, including any unopposed tentative rulings.

24 **2. INJUNCTIVE RELIEF: REFORMULATION**

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date and continuing thereafter, Allsop shall only purchase for
27 sale, or manufacture for sale in California, "Reformulated Products." Reformulated Products are
28 products that contain DEHP in concentrations less than 0.1 percent (1,000 parts per million) when

1 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
2 8270C or other methodology utilized by federal or state government agencies for the purpose of
3 determining DEHP content in a solid substance.

4 **3. MONETARY SETTLEMENT TERMS**

5 **3.1 Civil Penalty Payments**

6 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
7 this Consent Judgment, Allsop shall pay \$13,000 in civil penalties, as set forth in section 3.1.1 and
8 3.1.2 below. Each civil penalty payment will be allocated in accordance with California Health and
9 Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California
10 Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the
11 penalty amount paid to Plaintiff.

12 **3.1.1 Initial Civil Penalty**

13 Allsop shall pay an initial civil penalty in the amount of \$3,000. Defendant will provide its
14 payment in a single check made payable to “Whitney R. Leeman, Client Trust Account.” Leeman’s
15 counsel shall be responsible for remitting Allsop’s penalty payment(s) under this settlement to
16 OEHHA.

17 **3.1.2 Final Civil Penalty**

18 On or before February 15, 2017, Allsop shall make a final civil penalty payment of \$10,000.
19 Pursuant to title 11 California Code of Regulations, section 3203(c), Leeman agrees that the final
20 civil penalty payment shall be waived in its entirety if, no later than February 1, 2017, an officer of
21 Allsop provides Leeman with written certification that all of the Products it is selling or distributing
22 for sale in California as of the date of such certification are Reformulated Products as defined by
23 Section 2.1, and that Allsop will continue to offer only Reformulated Products for sale in California
24 in the future. The option to certify reformulation in lieu of making the final civil penalty payment
25 required by this Section is a material term and time is of the essence. Allsop shall deliver its
26 certificate, if any, to Leeman’s counsel at the address provided in Section 3.4, below. In the event
27 that Allsop does not timely certify its compliance or make the final civil penalty payment required by
28 this Section, the Parties agree that Leeman may file a motion or application seeking an order

1 compelling Allsop’s compliance with this Section. If successful, the Parties further agree that
2 Leeman shall be entitled to her reasonable attorneys’ fees and costs pursuant to general contract
3 principles and Code of Civil Procedure section 1021.5.

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

5 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
6 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
7 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
8 other settlement terms had been finalized, the Parties then attempted to (and did) reach an accord on
9 the compensation due to Leeman and her counsel under general contract principles and the private
10 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work
11 performed through the mutual execution of this Consent Judgment. Allsop shall issue a check to
12 “The Chanler Group” in the amount of \$30,000, pursuant to the payment procedures in Section 3.3
13 below, and to the address found in Section 3.4 below.

14 **3.3 Payments Held in Trust**

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

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1 **3.4 Payment Address**

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

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

8 **4. CLAIMS COVERED AND RELEASED**

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

10 Leeman, acting on her own behalf and in the public interest, releases Allsop and its parents,
11 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
12 attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
13 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
14 franchisers, resellers, cooperative members, licensors and licensees (“Downstream Releasees”) for
15 any violations arising under Proposition 65 for unwarned exposures to DEHP from Products sold by
16 Allsop prior to the Effective Date, as set forth in the Notice.

17 **4.2 Leeman’s Individual Release of Claims**

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

24 **4.3 Allsop’s Release of Leeman**

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

1 **5. COURT APPROVAL**

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

5 **6. SEVERABILITY**

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

9 **7. GOVERNING LAW**

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

16 **8. NOTICE**

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

20 **For Allsop:**

21 James Allsop, Chief Executive Officer
22 Allsop, Inc.
23 4201 Meridian Street
Bellingham, WA 98226

24 James G. Scadden, Esq.
25 Gordon & Rees LLP
26 275 Battery Street, Suite 2000
San Francisco, CA 94111

For Leeman:

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

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

1 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **10. POST EXECUTION ACTIVITIES**

6 Leeman agrees to comply with the reporting form requirements referenced in Health and
7 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
8 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
9 furtherance of obtaining such approval, Leeman and Allsop agree to mutually employ their best
10 efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain
11 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
12 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
13 supporting the motion, and appearing at the hearing before the Court.

14 **11. MODIFICATION**

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

18 **12. AUTHORIZATION**

19 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
20 Parties and acknowledge that they have read, understood, and agree to all of the terms and conditions
21 contained herein.

22 **AGREED TO:**

AGREED TO:

24 Date: 9/29/2016

 Date: 10/3/17

25 By: 
26 WHITNEY R. LEEMAN, PH.D.

 By: 
 RYAN ALLSOP, COO/Co-President
 ALLSOP, INC.

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