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

WHITNEY R. LEEMAN, PH.D.,
Plaintiff,
vs.
PARADIES GIFTS, INC.,; et al.,
Defendants.

CASE NO. CIV1600532
[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”) on the one hand, and Paradies Gifts, Inc. and Paradies & Company LLC (“Settling
5 Defendants”) on the other, with Leeman and Settling Defendants each individually referred to as a
6 “Party” and collectively as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Settling Defendants employ ten or more persons and are each a “person in the course of
13 doing business” for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
14 Health and Safety Code section 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Leeman alleges that Settling Defendants manufacture, import, sell, or distribute for sale in
17 California, vinyl/PVC ponchos containing di(2-ethylhexyl)phthalate (“DEHP”), without first
18 providing the exposure warning required by Proposition 65. DEHP is listed pursuant to
19 Proposition 65 as a chemical known to the State of California to cause birth defects and other
20 reproductive harm.

21 **1.5 Product Description**

22 Settling Defendants’ products that are covered by this Consent Judgment are defined as
23 vinyl/PVC ponchos containing DEHP including, without limitation, the *Coastalista Adult Poncho*,
24 *UPC #7 26922 03145 7*, which are manufactured, imported, distributed, sold and/or offered for
25 sale by Settling Defendants in the State of California, hereinafter the “Product[s].”

26 **1.6 Notice of Violation**

27 On December 1, 2015, Leeman served Settling Defendants and certain requisite public
28 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Settling

1 Defendants violated Proposition 65 when they failed to warn their customers and consumers in
2 California that vinyl/PVC ponchos expose users to DEHP.

3 **1.7 Complaint**

4 On or about February 10, 2016, Leeman filed the instant action (“Complaint”), naming
5 Settling Defendants as defendants for their alleged violations of Health and Safety Code section
6 25249.6 that are the subject of the Notice.

7 **1.8 No Admission**

8 Settling Defendants deny the material, factual, and legal allegations contained in the Notice
9 and Complaint, and maintain that all of the products that they have sold and distributed for sale in
10 California, including the Products, have been, and are, in compliance with all laws. Nothing in
11 this Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law,
12 issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
13 construed as an admission of any fact, finding, conclusion of law, issue of law, or violation of law.
14 This Section shall not, however, diminish or otherwise affect Settling Defendants’ obligations,
15 responsibilities, and 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 Settling Defendants as to the allegations in the Complaint, that venue is proper in
19 the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
20 Consent Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the date that this
23 Consent Judgment is approved by the Court, 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, Settling Defendants shall
27 only purchase for sale, manufacture for sale, import, sell, or distribute for sale in California
28 “Reformulated Products,” or Products that are sold with a clear and reasonable warning pursuant

1 to Section 2.2 below. For purposes of this Consent Judgment, “Reformulated Products” are
2 products that contain DEHP in concentrations of less than 0.1 percent (1,000 parts per million)
3 when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A
4 and 8270C, or any other methodology utilized by federal or state agencies for the purpose of
5 determining the DEHP content in a solid substance.

6 **2.2 Product Warnings**

7 Commencing on the Effective Date, Settling Defendants shall provide clear and reasonable
8 warnings for all Products that Defendants purchase for sale, manufacture for sale, import, sell or
9 distribute in California as set forth in this section below for all such Products that do not currently
10 have warnings and that do not qualify as Reformulated Products. Each warning shall be
11 prominently placed with such conspicuousness as compared with other words, statements, designs,
12 or devices as to render it likely to be read and understood by an ordinary individual under
13 customary conditions before purchase or use. Each warning shall be provided in a manner such
14 that the consumer or user understands to which *specific* Product the warning applies, so as to
15 minimize the risk of consumer confusion.

16 **(2.2.1) Retail Store Sales.**

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

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

22 Or,

23 **WARNING:** This product contains DEHP, a chemical known
24 to the State of California to cause birth defects and
25 other reproductive harms.

25 **(b) Point-of-Sale Warnings.** Alternatively, Settling Defendants may provide
26 warning signs in the form below to their customers in California with instructions to post the
27 warnings in close proximity to the point of display of the Products. Such instruction sent to
28 Settling Defendants’ customers shall be sent by certified mail, return receipt requested.

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WARNING: This product contains DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harms.

Or,

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

Where more than one Product is sold in proximity to other like items or to those that do not require a warning (e.g., Reformulated Products as defined in Section 2.1), the following statement shall be used:¹

WARNING: The following products contain DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harms:

[list products for which warning is required]

Or,

WARNING: The following products contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm:

[list products for which warning is required]

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payments

Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred to in this Consent Judgment, Settling Defendants shall pay \$13,500 in civil penalties. Each civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-five percent (75%) of the funds paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of the funds allocated to Leeman. Leeman and her counsel shall ensure that seventy-five percent (75%) of each settlement payment is delivered to OEHHA.

¹For purposes of the Settlement Agreement, “sold in proximity” shall mean that the Product and another similar product are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 **3.1.1 Initial Civil Penalty**

2 Settling Defendants shall issue a check for its initial civil penalty payment in the
3 amount of \$3,500 payable to “Wendy Leeman Ph.D., Client Trust Account” and deliver this check
4 to Lewis Brisbois Bisgaard & Smith LLP (“LBBS”). LBBS shall provide The Chanler Group
5 with written confirmation that LBBS has received this check. Within five (5) days of the date the
6 Court approves this Consent Judgment, including any unopposed tentative rulings, LBBS shall
7 deliver the check for the initial civil penalty payment to “Whitney R. Leeman, Ph.D., Client Turst
8 Account.” Leeman subsequently will direct 75% of the initial civil penalty payment to OEHHA.

9 **3.1.2 Final Civil Penalty**

10 On or before March 31, 2017, Settling Defendants shall make a final civil penalty
11 payment of \$10,000. Leeman agrees that the final civil penalty payment shall be waived in its
12 entirety if, no later than March 15, 2017, an officer of each Settling Defendant provides Leeman
13 with written certification that they are no longer offering or distributing for sale in California the
14 Products, or are only offering for sale and distributing for sale in California, Reformulated
15 Products as defined in section 2.1, above. The option to certify reformulation in lieu of making
16 the final civil penalty payment required by this Section is a material term and time is of the
17 essence.

18 **3.2 Reimbursement of Fees and Costs**

19 The parties acknowledge that Leeman and her counsel offered to resolve this dispute
20 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
21 the issue to be resolved after the material terms of this Consent Judgment had been settled.
22 Shortly after the other settlement terms had been finalized, Settling Defendants expressed a desire
23 to resolve Leeman’s fees and costs. The Parties then attempted to (and did) reach an accord on the
24 compensation due to Leeman’s and her counsel under general contract principles and the private
25 attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all
26 work performed through the mutual execution of this Consent Judgment. Settling Defendant shall
27 issue a check payable to “The Chanler Group” for fees and costs in the amount of \$26,000 and
28 deliver this check to LBBS to be held in trust by LBBS for The Chanler Group. LBBS shall

1 provide the Chanler Group with written confirmation that it has received this check within five
2 days of its receipt. Within five (5) days of the date the Court approves this Consent Judgment,
3 including any unopposed tentative rulings, LBBS shall issue a check payable to “The Chanler
4 Group” to the address found in Section 3.3.1 below.

5 **3.3 Payment Procedures**

6 Except for the final civil penalty payment required by Section 3.1.2, all payments due
7 under this Consent Judgment are to be delivered within ten (10) days of the filing of the motion to
8 approve this Consent Judgment under Section 10 below, to **Lewis Brisbois Bisgaard & Smith**
9 **LLP**, and released to The Chanler Group and Leeman within five (5) days of the Effective Date,
10 according to the following subsection.

11 **3.3.1 Payment Address**

12 All payments and tax documentation for OEHHA, Leeman, and her counsel shall
13 be delivered to:

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
Parker Plaza, Suite 214
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 Settling Defendants
20 and their parents, subsidiaries, affiliated entities under common ownership, directors, officers,
21 employees, and attorneys (“Releasees”) and each entity to whom they directly or indirectly
22 distribute or sell the Products, including but not limited to their downstream distributors,
23 wholesalers, customers, retailers, franchisers, cooperative members, licensors, and licensees
24 (“Downstream Releasees”) for violations arising under Proposition 65 for unwarned exposures to
25 DEHP from the Products sold by Settling Defendants prior to the Effective Date, as set forth in
26 the Notice and Complaint.

27 **4.2 Leeman’s Individual Release of Claims**

28 Leeman, in her individual capacity only and *not* in her representative capacity, also

1 provides a release to Settling Defendants, Releasees, and Downstream Releasees which shall be
2 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
3 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of
4 Leeman of any nature, character or kind, arising out of alleged or actual exposures to DEHP from
5 the Products sold or distributed for sale by Settling Defendants before the Effective Date.

6 **4.3 Settling Defendants' Release of Leeman**

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

13 **5. COURT APPROVAL**

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

17 **6. SEVERABILITY**

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

21 **7. GOVERNING LAW**

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

1 toxics control laws.

2 **8. NOTICE**

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

6 For Settling Defendants:

7 James A. Geocaris, Esq.
8 Lewis Brisbois Bisgaard & Smith LLP
9 650 Town Center Drive, Suite 1400
Costa Mesa, CA 92626

10 For Leeman:

11 The Chanler Group
12 Attn: Proposition 65 Coordinator
13 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

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

16 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

20 **10. POST EXECUTION ACTIVITIES**

21 Leeman agrees to comply with the reporting form requirements referenced in Health and
22 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and
23 Safety Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the
24 settlement. Leeman will prepare and file this motion. Also, in furtherance of obtaining such
25 approval, Leeman and Settling Defendants agree to mutually employ their best efforts, and that of
26 their counsel, to support the entry of this agreement as judgment, and to obtain judicial approval of
27 their settlement in a timely manner. For purposes of this Section, "best efforts" shall include, at a
28 minimum, cooperating with the drafting and filing of the necessary moving papers, and supporting

1 the motion for judicial approval.

2 **11. MODIFICATION**

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

6 **12. AUTHORIZATION**

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

9 **AGREED TO:**

AGREED TO:

10 Date: 5/16/16
11 Date: _____

Date: _____

12 By: Whitney Leeman
13 WHITNEY R. LEEMAN, PH.D.

By: _____
DENNIS ULIANO, Chief Operating Officer
PARADIES GIFTS, INC., and PARADIES
& COMPANY LLC

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1 the motion for judicial approval.

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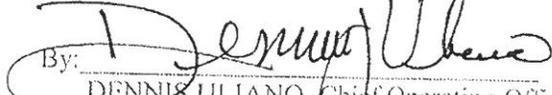
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11 Date: _____

Date: 5/16/2016

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WHITNEY R. LEEMAN, PLLC.

By: 
DENNIS ULIANO, Chief Operating Officer
PARADIES GIFTS, INC., and PARADIES
& COMPANY LLC

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