

Christopher M. Martin, State Bar No. 186021
Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710
Telephone: (510) 848-8880
Facsimile: (510) 848-8118

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

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

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

PERSEUS BOOKS, INC., *et al.*,

Defendants.

Case No. RG-17-851631

[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 CLP PB, LLC (formerly known as “Perseus Books, LLC”) (“PB”),
5 with Leeman and PB each individually referred 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 to improve human health by reducing or eliminating harmful substances
9 contained in consumer products.

10 **1.3 Defendant**

11 While doing business as Perseus Books, LLC, PB employed ten or more persons and was a
12 “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic
13 Enforcement Act of 1986, Health and Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Leeman alleges, while doing business as Perseus Books, LLC, PB manufactured, distributed,
16 imported, sold and offered for sale in California, shot glasses with exterior decorations that contained
17 lead without first providing the exposure warning required by Proposition 65. Lead is listed pursuant
18 to Proposition 65 as a chemical known to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 For purposes of this Consent Judgment, “products” are defined as shot glasses with exterior
21 decorations that contain lead and are manufactured, distributed, imported, sold, and/or offered for
22 sale in California by PB including, but not limited to, *The Big Bang Theory Kit (Shot Glass)*, #50995,
23 *ISBN 978-0-7624-5837-0* (hereinafter, “Products”).

24 **1.6 Notice of Violation**

25 On August 8, 2016, Leeman served PB and the requisite public enforcement agencies with a
26 “60-Day Notice of Violation” (“Notice”), alleging that Defendant violated Proposition 65 by failing
27 to warn customers and consumers in California of the health hazards associated with exposures to
28

1 lead from the Products. To the best of the Parties' knowledge, no public enforcer has commenced
2 and is diligently prosecuting an action to enforce violations alleged in the Notice.

3 **1.7 Complaint**

4 On March 3, 2017, Leeman filed the instant action ("Complaint"), naming PB as a Defendant
5 for the alleged violations of Health and Safety Code § 25249.6 that are the subject of the Notice.

6 **1.8 No Admission**

7 This Consent Judgment resolves all claims which are or could have been asserted in the
8 Complaint against PB. The Parties enter into this Consent Judgment pursuant to a full and final
9 settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation.
10 PB denies the material, factual, and legal allegations contained in the Notice and Complaint, and
11 maintains that it did not knowingly or intentionally expose California consumers to lead through the
12 reasonably foreseeable use of its products, and otherwise contends that all of the products it has sold
13 and distributed for sale in California or elsewhere, including the Products, have been, and are in
14 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission of
15 any fact, finding, conclusion of law, issue of law, or violation of law, nor shall compliance with this
16 Consent Judgment constitute or be construed as an admission of any fact, finding, conclusion of law,
17 issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect PB's
18 obligations, responsibilities, and duties under this Consent Judgment.

19 **1.9 Jurisdiction**

20 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
21 jurisdiction over PB as to the allegations contained in the Complaint, that venue is proper in Alameda
22 County, and that the Court has jurisdiction to enter and enforce the provisions of this Consent
23 Judgment pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
26 this Consent Judgment is executed by the Parties.
27
28

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

2 **2.1 Commitment to Reformulate**

3 Commencing on the Effective Date and continuing thereafter, PB shall only manufacture for
4 sale or purchase for sale in California Reformulated Products. For purposes of this Consent
5 Judgment, Reformulated Products are defined as Products that (a) contain lead in concentrations of
6 no more than 90 parts per million ("ppm") (0.09%) in any exterior decorations when analyzed
7 pursuant to U.S. Environmental Protection Agency ("EPA") testing methodologies 3050B and
8 6010B, or equivalent methodologies used by state and federal agencies to determine lead content in
9 a solid substance; (b) yield a result of no more than 1.0 microgram ("µg") of lead when a wipe is
10 applied to all surfaces according to NIOSH 9100 protocol; and (c) a Reformulated Product shall yield
11 a result of non-detect when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or
12 equivalent methodologies used by state and federal agencies to determine lead content in a solid
13 substance.

14 **3. MONETARY SETTLEMENT TERMS**

15 **3.1 Civil Penalty Payments**

16 Pursuant to Health and Safety Code § 25249.7(b), and in settlement of all the claims referred
17 to in the Notice, Complaint, and this Consent Judgment, PB shall pay \$4,000 in civil penalties. Each
18 civil penalty payment shall be allocated according to Health & Safety Code § 25249.12(c)(1) and (d),
19 with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health
20 Hazard Assessment ("OEHHA") and the remaining twenty-five percent (25%) of the penalty retained
21 by Leeman.

22 **3.2 Reimbursement of Attorneys' Fees and Costs**

23 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute without
24 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue
25 to be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
26 other settlement terms had been finalized, the Parties negotiated the compensation due to Leeman
27 and her counsel under general contract principles and the private attorney general doctrine codified
28 at California Code of Civil Procedure § 1021.5 for all work performed through the mutual execution

1 of this Consent Judgment, and through court approval of the same, but exclusive of fees and costs
2 on appeal, if any. Defendant shall pay \$18,500 for all fees and costs incurred investigating, bringing
3 this matter to Defendant's attention, and litigating and negotiating a settlement that provides a
4 significant public benefit.

5 **3.3 Payments Held In Trust**

6 All payments due under this Consent Judgment shall be held in trust until such time as the
7 Court approves the Parties' settlement. All payments due under this agreement shall be delivered
8 within forty-five (45) days of the date that this Consent Judgment is fully executed by the Parties,
9 and held in trust by Defendant's counsel until the Court grants the motion for approval of this
10 Consent Judgment contemplated by Section 5. Within five (5) business days of the Court's approval
11 of this Consent Judgment, Defendant's counsel shall tender the civil penalty payment and attorneys'
12 fee and costs reimbursements required by Sections 3.1 and 3.2, as follows:

13 3.3.1 A check in the amount of \$3,000 payable to OEHHA;

14 3.3.2 A check in the amount of \$1,000 paid to "Whitney R. Leeman, Ph.D.
15 Client Trust Account"; and

16 3.3.3 A check in the amount of \$18,500 paid to "The Chanler Group."

17 **3.4 Payment Address**

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

19 The Chanler Group
20 Attn: Proposition 65 Controller
21 2560 Ninth Street
22 Parker Plaza, Suite 214
23 Berkeley, CA 94710

24 **4. CLAIMS COVERED AND RELEASED**

25 **4.1 Leeman's Public Release of Proposition 65 Claims**

26 Leeman, acting on her own behalf, or on behalf of her past and current agents, representatives,
27 attorneys, successors, and/or assignees ("Releasers"), and Releasers hereby release any such claims,
28 against PB and Hachette Book Group, Inc. ("Hachette") and their parents, subsidiaries, affiliated
entities under common ownership, predecessors, successors, directors, officers, employees, attorneys,

1 and each entity to whom PB and Hachette directly or indirectly distribute or sells Products including,
2 but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees,
3 cooperative members, licensors, and licensees (collectively, “Releasees”) based on the failure to warn
4 of alleged exposures to lead contained in the Products manufactured, distributed, sold and/or offered
5 for sale by Releasees in California before the Effective Date, as set forth in the Notice and Complaint.

6 In further consideration of the promises and agreements herein contained, Leeman, as an
7 individual and not on behalf of the public, and on behalf of herself, her past and current agents,
8 representatives, attorneys, successors, and/or assignees, hereby waives all Leeman’s rights to institute
9 or participate in, directly or indirectly, any form of legal action and releases all claims that Leeman
10 may have, including, without limitation, all actions, and causes of action, in law or in equity, suits,
11 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but
12 not exclusively, investigation fees, expert fees, and attorneys’ fees arising under Proposition 65 with
13 respect to lead in the Products, as alleged in the notice of violation, manufactured, distributed, sold
14 and/or offered for sale by PB, before the Effective Date (collectively “claims”), against Releasees.

15 **4.2 Leeman’s Individual Release of Claims**

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

22 **4.3 PB’s Release of Leeman**

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

1 **4.4 Mutual Waiver of California Civil Code Section 1542**

2 The Parties each acknowledge she/it is familiar with Section 1542 of the Civil Code, which
3 provides as follows:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
5 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
6 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF
7 KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS
8 OR HER SETTLEMENT WITH THE DEBTOR.

9 The Parties, each on her/its own behalf, and on behalf of her/its past and current agents,
10 representatives, attorneys, successors, and/or assignees, expressly waive and relinquish any and
11 all rights and benefits which they may have under, or which may be conferred upon them by the
12 provisions of Civil Code section 1542 as well as under any other state or federal statute or common
13 law principle of similar effect, to the fullest extent she/it may lawfully waive such rights or
14 benefits pertaining to the released matters, as specifically defined by Sections 4.2 and 4.3, above.

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 it is not approved and entered by the Court within one year after it has been fully
18 executed by the Parties, or within such additional time as the Parties may agree to in writing.

19 **6. SEVERABILITY**

20 Except as provided in Section 7 below, if subsequent to the Court's approval and entry of this
21 Consent Judgment any provision is held by a court to be unenforceable, the remaining provisions
22 shall not be adversely affected and will continue to be valid.

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 Proposition 65 is repealed, or is otherwise
26 rendered inapplicable by reason of law generally, or as to the Products, and/or as to lead, then PB
27 may provide written notice to Leeman of any asserted change in the law, and shall have no further
28 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
Products are so affected.

1 **8. NOTICE**

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

5 **CLP PB, LLC:**

6 Kenneth Lau, President
7 CLP PB, LLC
8 250 West 57th Street, 15th Floor
9 New York, NY 10107

5 **Leeman:**

6 Proposition 65 Coordinator
7 The Chanler Group
8 2560 Ninth Street
9 Parker Plaza, Suite 214
10 Berkeley, CA 94710-2565

10 **Counsel for CLP PB, LLC:**

11 Thomas L. Van Wyngarden, Esq.
12 Katten Muchin Rosenman LLP
13 2029 Century Park East, Suite 2600
14 Los Angeles, CA 90067-3012

15 Any Party may, from time to time, specify in writing to the other, a change of recipient and/or
16 address to 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 signature, each of
18 which shall be deemed an original and all of which, when taken together, shall constitute one and the
19 same document.

20 **10. POST EXECUTION ACTIVITIES**

21 Leeman agrees to comply with the reporting form requirements referenced in Health and
22 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
23 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which Leeman
24 shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually employ
25 their best efforts, and those of their counsel, to support the entry of this agreement as a judgment, and
26 to obtain judicial approval of their settlement in a timely manner. For purposes of this Section, “best
27 efforts” shall include, at a minimum, supporting the motion for approval, responding to any
28

1 opposition or objection any third-party may file, and appearing at the hearing before the Court if so
2 requested.

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

7 **12. AUTHORIZATION**

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

10 **AGREED TO:**

AGREED TO:

11
12 Date: July 3, 2017

Date: July , 2017

13
14 By: Whitney R. Loeman
15 Whitney R. Loeman, Ph.D.

By: _____
Kenneth Lau, President
CLP PB, LLC

1 this Section, "best efforts" shall include, at a minimum, supporting the motion for approval,
2 responding to any opposition or objection any third-party may file, and appearing at the hearing
3 before the Court if so requested.

4 **11. MODIFICATION**

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

8 **12. AUTHORIZATION**

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

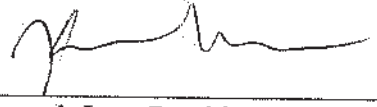
11 **AGREED TO:**

AGREED TO:

12
13 Date: July __, 2017

Date: July 11, 2017

14
15 By: _____
16 Whitney R. Leeman, Ph.D.

15 By:  _____
16 Kenneth Lau, President
17 CLP PB, LLC