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Josh Voorhees, State Bar No. 241436
THE CHANLER GROUP
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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,

vs.

AMERICAN DJ SUPPLY, INC.; and DOES
1-150, inclusive,

Defendants.

Case No. RG14746125

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT AMERICAN DJ
SUPPLY, INC.**

1 **I. INTRODUCTION**

2 **1.1 Whitney R. Leeman, Ph.D., and American DJ Supply, Inc.**

3 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D
4 (“Leeman” or “Plaintiff”) and defendant American DJ Supply, Inc. (“ADJ” or “Defendant”), with
5 Leeman and ADJ collectively referred to as the “Parties.”

6 **1.2 Whitney R. Leeman, Ph.D.**

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

10 **1.3 American DJ Supply, Inc.**

11 Leeman alleges that ADJ employs ten or more persons and is a person in the course of
12 doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,
13 California Health & Safety Code § 25249.5 et seq. (“Proposition 65”).

14 **1.4 General Allegations.**

15 Leeman alleges that ADJ has manufactured, imported, distributed and/or sold headphones
16 with vinyl/PVC ear cushions and vinyl/PVC headphone bags containing DEHP for use in the State
17 of California without the requisite Proposition 65 warnings. DEHP is listed pursuant to
18 Proposition 65 as a chemical known to the State of California to cause cancer and birth defects and
19 reproductive harm.

20 **1.5 Notice of Violation.**

21 On July 30, 2014, Leeman served ADJ and various public enforcement agencies with a
22 document entitled “60-Day Notice of Violation” alleging that ADJ violated Proposition 65 by
23 failing to warn California consumers that its headphones with vinyl/PVC ear cushions and
24 vinyl/PVC headphone bags, including, but not limited to, the *American Audio Professional High*
25 *Powered Headphones, HP 550, UPC # 6 40282 02412 9*, exposed users in California to DEHP
26 (the “Notice”).

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1.6 Complaint.

On October 28, 2014, Leeman filed a complaint in the Superior Court in and for the County of Alameda against ADJ and Does 1 through 150, *Leeman v. American DJ Supply, Inc., et al.*, Case No. RG14746125 (the “Action”), alleging violations of California Health & Safety Code § 25249.6, based on the alleged exposures to DEHP contained in certain headphones with vinyl/PVC ear cushions and vinyl/PVC headphone bags sold by ADJ in the State of California.

1.7 No Admission.

The Parties enter into this Consent Judgment as a full and final settlement of all claims that were raised in the Notice and Complaint, or that could have been raised in the Complaint, arising out of the facts and/or conduct alleged therein. ADJ denies the material, factual and legal allegations contained in the Notice and the Complaint, and maintains that it is not a person subject to Proposition 65, and that all of the products it has manufactured, imported, distributed and/or sold, including the Covered Products, have been, and are, in compliance with all laws, and are completely safe for their intended use. By execution of this Consent Judgment and agreeing to comply with its terms, ADJ does not admit any facts or conclusions of law including, but not limited to, any facts or conclusions of law suggesting or demonstrating that it has sold any products in the State of California, or that it has committed any violations of Proposition 65, or any other statutory, common law or equitable requirements relating to DEHP in Covered Products, such being specifically denied by ADJ. Nothing in this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an admission by ADJ of any fact, conclusion of law, issue of law or violation of law, nor that it is subject to personal jurisdiction in the State of California. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or defense ADJ may have in this or any other future legal proceedings. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties of ADJ under this Consent Judgment.

1.8 Consent to Jurisdiction.

For purposes of this Consent Judgment, ADJ stipulates that this Court has jurisdiction over ADJ as to the allegations contained in the Complaint, that venue is proper in the County of

1 Alameda and that this Court has jurisdiction to enter and enforce the provisions of this Consent
2 Judgment.

3 **2. DEFINITIONS**

4 **2.1** “Covered Product[s]” means headphones with vinyl/PVC ear cushions containing
5 DEHP and vinyl/PVC headphone bags containing DEHP, including, but not limited to, the
6 *American Audio Professional High Powered Headphones, HP 550, UPC # 6 40282 02412 9*,
7 manufactured by ADJ, which are distributed and/or sold in the State of California.

8 **2.2** “Effective Date” means the date the Court approves the Consent Judgment,
9 including any tentative rulings not opposed by the Parties.

10 **3. INJUNCTIVE RELIEF**

11 As of December 1, 2015, all Covered Products that ADJ manufactures for sale in
12 California shall: (1) be “Reformulated Covered Products” as defined in Section 3.1 or (2) contain
13 of the clear and reasonable warnings set forth in Section 3.2.

14 **3.1 Reformulation**

15 Reformulated Covered Products” shall contain less than or equal to 1,000 parts per million
16 (“ppm”) of DEHP when analyzed pursuant to EPA testing methodologies 3580A and 8270C, or
17 equivalent methodologies utilized by federal or state agencies for the purpose of determining
18 DEHP content in a solid substance.

19 **3.2 Warnings**

20 Covered Products that are not “Reformulated Covered Products” as defined in Section 3.1
21 will include a warning affixed to the packaging, labeling, or directly on each Covered Product that
22 states:

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

25 Nothing in this Consent Judgment shall preclude ADJ from shipping and/or selling in
26 California its existing inventory of Covered Products, for ADJ shall pay a civil fine pursuant to
27 Section 4.1.

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1 **4. MONETARY SETTLEMENT TERMS**

2 **4.1 Penalties Pursuant to Health & Safety Code § 25249.7(b).**

3 In complete settlement of all the claims referred to in this Consent Judgment, ADJ shall
4 pay a total of \$8,000 in civil penalties in accordance with this Section. Each penalty payment will
5 be allocated by Leeman in accordance with California Health & Safety Code § 25249.12(c)(1) &
6 (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
7 Assessment (“OEHHA”) and the remaining 25% of the penalty retained by Leeman, as follows:

8 **4.1.1 Initial Civil Penalty.**

9 ADJ shall pay an initial civil penalty in the amount of \$3,000 on or before the Effective
10 Date. Defendant shall issue a check payable to “Sherman IP LLP” in the amount of \$3,000 to be
11 held in trust by Sherman IP LLP. Sherman IP LLP shall provide The Chanler Group with written
12 confirmation within five (5) days of receipt that the funds have been deposited in a trust account.
13 Within two (2) days of the Effective Date, Sherman IP LLP shall issue one check payable to
14 “Whitney Leeman, Client Trust Account.” in the amount of \$3,000.

15 **4.1.2 Final Civil Penalty.**

16 ADJ shall pay a final civil penalty in the amount \$5,000 on or before October 15, 2015,
17 except that the final civil penalty shall be waived in its entirety, if, on or before October 1, 2015,
18 an Officer of ADJ certifies in writing that, as of the October 1, 2015, ADJ only manufactures
19 Reformulated Covered Products for sale in California, and that it will thereafter continue to
20 manufacture for sale in California only Reformulated Covered Products, or that it has discontinued
21 manufacturing for sale the Covered Products in California. Such certification must be received by
22 The Chanler Group on or before October 1, 2015. The certification for expedited reformulation,
23 or discontinuing sales of the Covered Products, in lieu of paying the final civil penalty provided by
24 this Section is a material term, and time is of the essence. Unless waived, ADJ shall issue one
25 check payable to “Whitney Leeman, Client Trust Account.” in the amount of \$5,000.

26 **4.2 Reimbursement of Plaintiff’s Fees and Costs.**

27 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute
28 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving

1 the fee issue to be resolved after the material terms of the agreement had been settled. ADJ then
2 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
3 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
4 to Leeman and her counsel under general contract principles and the private attorney general
5 doctrine codified at California Code of Civil Procedure § 1021.5, for all work performed (and to
6 be performed) in this matter, except fees that may be incurred in connection with an Office of the
7 Attorney General, appeal (if any). Under these legal principles, ADJ shall pay the total amount of
8 \$32,000 to reimburse Plaintiff's fees and costs incurred investigating, litigating and enforcing this
9 matter, inclusive of all fees and costs incurred (and yet to be incurred) negotiating, drafting, and
10 obtaining the Court's approval of this Consent Judgment in the public interest. On or before the
11 Effective Date, ADJ shall issue a check payable to "Sherman IP LLP" in the amount of \$32,000 to
12 be held in trust by Sherman IP LLP for The Chanler Group. Sherman IP LLP shall provide The
13 Chanler Group with written confirmation within five (5) days of receipt that the funds have been
14 deposited in a trust account. Within two (2) days of the Effective Date, Sherman IP LLP shall
15 issue a check payable to "The Chanler Group."

16 **4.3 Payment Procedures.**

17 All payments pursuant to Sections 4.1 through 4.2, shall be delivered to the following

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

23 If for any reason this Consent Judgment is not entered by the Court within nine (9)
24 months of the date the Consent Judgment is executed by all parties, Plaintiff shall meet and confer
25 with ADJ about mutually agreeable steps the parties can take to ensure entry of the Consent
26 Judgment. If such steps cannot be agreed between the Parties, Plaintiff shall promptly return to
27 ADJ any and all monies paid by ADJ herein under Sections 4.1 and 4.2 (if not waived) upon
28 ADJ's written request.

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1 **5. CLAIMS COVERED AND RELEASED**

2 **5.1** Leeman, acting on behalf of herself and in the public interest, hereby releases ADJ,
3 its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers,
4 employees, attorneys, shareholders (“Defendant Releasees”), and any of its downstream
5 distributors, wholesalers, customers, retailers, franchisees, cooperative members, licensors,
6 licensees, and any other person or entity to whom they directly or indirectly distribute or sell
7 Covered Products (“Downstream Defendant Releasees”), from any alleged or actual violation of
8 Proposition 65 that has been asserted by Leeman in the public interest in her Notice and Complaint
9 regarding the alleged failure to warn about exposure to DEHP in Covered Products manufactured,
10 sold and/or distributed by ADJ prior to the Effective Date. ADJ’s compliance with this Consent
11 Judgment constitutes compliance with Proposition 65 with respect to DEHP in Covered Products.

12 **5.2** Leeman on behalf of herself, her past and current agents, representatives, attorneys,
13 successors, and/or assignees, and in the interest of the general public, hereby waive all rights to
14 institute or participate in, directly or indirectly, any form of legal action, and releases all claims,
15 including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities,
16 demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not
17 limited to, investigation fees, expert fees, and attorneys’ fees) of any nature whatsoever, fixed or
18 contingent (collectively “Claims”), against ADJ, Defendant Releasees, and Downstream
19 Defendant Releasees arising from any violation or alleged violation of Proposition 65 regarding
20 the failure to warn about exposure to DEHP in Covered Products manufactured, sold or distributed
21 prior to the Effective Date.

22 **5.3** Leeman also, in her individual capacity only and *not* in her representative capacity,
23 on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or
24 assignees, provides a general release herein which shall be effective as a full and final accord and
25 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees,
26 damages, losses, claims, liabilities and demands of Leeman of any nature, character or kind,
27 known or unknown, suspected or unsuspected, arising out of alleged exposure to DEHP in the
28 Covered Products manufactured prior to the Effective Date.

1 The Parties further understand and agree that the release covered by Sections 5.1, 5.2 and
2 5.3 shall not extend upstream to any entities, other than ADJ, that manufactured the Covered
3 Products or any component parts thereof, or any distributors or suppliers who sold the Covered
4 Products or any component parts thereof to ADJ.

5 **5.4** ADJ waives any and all Claims against Leeman, her attorneys, and other
6 representatives for any and all actions taken or statements made by Leeman and her attorneys and
7 other representatives, whether in the course of investigating claims or otherwise seeking
8 enforcement of Proposition 65 against them in this matter, and/or with respect to the Covered
9 Products.

10 **5.5** ADJ also provides a general release herein which shall be effective as a full and
11 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
12 attorneys' fees, damages, losses, claims, liabilities and demands of ADJ of any nature, character or
13 kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice
14 and Action.

15 **6. COURT APPROVAL**

16 **6.1** By this Consent Judgment and upon the Court's approval of the same in its entirety
17 and without modification, unless such a modification is agreed to by the Parties in writing, the
18 Parties waive their right to a trial on the merits, and waive their rights to initiate appellate review
19 of this Consent Judgment, and of any and all interim rulings, including all pleading, procedural,
20 and discovery orders.

21 **6.2** The parties acknowledge that, pursuant to California Health & Safety Code
22 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment,
23 which Leeman shall file and which ADJ shall not oppose.

24 **6.3** If this Consent Judgment is not approved by the Court: (a) this Consent Judgment
25 and any and all prior agreements between the Parties merged herein shall terminate and become
26 null and void, and the Action shall revert to the status that existed prior to the execution date of
27 this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
28 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, including

1 the parties' participation in the negotiation and preparation of this Consent Judgment, shall have
2 any effect, nor shall any such matter be admissible in evidence for any purpose in this Action, or
3 in any other proceeding; and (c) the Parties agree to meet and confer to determine whether to
4 modify the terms of the Consent Judgment and to resubmit it for approval.

5 **7. GOVERNING LAW**

6 **7.1** The terms of this Consent Judgment shall be governed by the laws of the State of
7 California, and shall apply only to Covered Products offered for sale in the State of California. In
8 the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law
9 generally, or as to the Covered Products, then ADJ may provide written notice to Leeman of any
10 asserted change in the law, and shall have no further obligations pursuant to this Consent
11 Judgment with respect to, and to the extent that, the Covered Products are so affected.

12 **7.2** The Parties, including their counsel, have participated in the preparation of this
13 Consent Judgment, and this Consent Judgment is the result of the joint efforts of the Parties. This
14 Consent Judgment was subject to revision and modification by the Parties and has been accepted
15 and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or
16 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result
17 of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment
18 agrees that any statute or rule of construction providing that ambiguities are to be resolved against
19 the drafting Party should not be employed in the interpretation of this Consent Judgment and, in
20 this regard, the Parties hereby waive California Civil Code § 1654.

21 **8. NOTICES**

22 **8.1** Unless specified herein, all correspondence and notices required to be provided
23 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
24 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party
25 by the other Party at the following addresses:

26 To ADJ:

27 SHERMAN IP LLP
28 1519 26th Street
Santa Monica, Ca 90404

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To Leeman:

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

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

9. MODIFICATION

9.1 **Modification.** This Consent Judgment may be modified by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court, or by motion of any Party and entry of a modified Consent Judgment by the Court.

9.2 **Subsequent Legislation.** If, subsequent to the Effective Date, legislation or regulation is adopted that addresses the DEHP content of Covered Products sold in California hereunder, any Party shall be entitled to request that the Court modify the reformulation standard in Section 3.1 of this Consent Judgment for good cause shown.

9.3 **Notice; Meet and Confer.** Any Party seeking to modify this Consent Judgment or to allege a violation thereof shall first attempt in good faith to meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

10. ENTIRE AGREEMENT

10.1 This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. No supplementation, modification, waiver, or termination of this Consent Judgment shall be binding unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless set forth in writing between the Parties.

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11. RETENTION OF JURISDICTION

11.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any provision hereof, under California Code of Civil Procedure § 664.6. Should either Party allege a violation of this Consent Judgment, the alleging Party agrees to provide written notice thereof, and to meet and confer and provide all relevant evidence of any alleged violation to the other Party. If the Parties cannot agree on an appropriate resolution of the alleged violation within 30 days of the written notice thereof and provision of all relevant evidence, either Party shall be free to move the Court to enforce the terms of this Consent Judgment.

12. COUNTERPARTS; FACSIMILE SIGNATURES

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

13. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: May 22, 2015

Date: _____

By: *Whitney R. Leeman*
Plaintiff Whitney R. Leeman, Ph.D.

By: _____
Toby Velazquez, President
Defendant American DJ Supply, Inc.

1 **11. RETENTION OF JURISDICTION**

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4 hereof, under California Code of Civil Procedure § 664.6. Should either Party allege a violation of
5 this Consent Judgment, the alleging Party agrees to provide written notice thereof, and to meet and
6 confer and provide all relevant evidence of any alleged violation to the other Party. If the Parties
7 cannot agree on an appropriate resolution of the alleged violation within 30 days of the written
8 notice thereof and provision of all relevant evidence, either Party shall be free to move the Court
9 to enforce the terms of this Consent Judgment.

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13 taken together, shall constitute one and the same document.

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15 13.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
16 respective Parties and have read, understood, and agree to all of the terms and conditions of this
17 Consent Judgment.

18 **AGREED TO:**


AGREED TO:

19 Date: _____

Date: 5/28/15

20
21 By: _____

22 Plaintiff Whitney R. Leeman, Ph.D.

21 By:  _____

22 Toby Velazquez, President
23 Defendant American DJ Supply, Inc.