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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 UNLIMITED CIVIL JURISDICTION

11
12 WHITNEY R. LEEMAN, PH.D.,

13 Plaintiff,

14 v.

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

16 Defendants.

Case No. RG16821244

CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D.
4 (“Leeman”), and CLP PB, LLC (f/k/a Perseus Books, LLC) (“PB”), with Leeman and PB each
5 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 hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 While doing business as Perseus Books, LLC, PB employed ten or more individuals and was
12 a “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 mugs with exterior decorations that contained lead
17 without first providing the exposure warning required by Proposition 65. Lead is listed pursuant to
18 Proposition 65 as a chemical known to cause birth defects or other reproductive harm. PB denies
19 Leeman’s allegations.

20 **1.5 Product Description**

21 For purposes of this Consent Judgment, “Products” are defined as mugs with exterior
22 decorations that contain lead that are manufactured, distributed, imported, sold, or offered for sale in
23 California by PB including, but not limited to, *The Big Lebowski Kit (Mug)*, #52000, ISBN-13: 978-
24 0-7624-3900-3, hereinafter “Products.”

25 **1.6 Notice of Violation**

26 On August 20, 2015, Leeman served PB, and the requisite public enforcement agencies with a
27 “60-Day Notice of Violation” (“Notice”) alleging that Defendants violated Proposition 65 by failing
28 to warn its customers and consumers in California of the health hazards associated with exposures to

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 the violations alleged in the Notice.

3 **1.7 Complaint**

4 On June 28, 2016, 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 in the Notice and Complaint, and maintains that
11 it did not knowingly or intentionally expose California consumers to lead through the reasonably
12 foreseeable use of its products, and otherwise contends that all of the products it has sold and
13 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 in the Complaint, that venue is proper in Alameda County,
22 and that the Court has jurisdiction to enter and enforce the provisions of this Consent Judgment
23 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 a
9 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 (defined as no more than 25 ppm lead content for any decorations located in
12 the upper 20 centimeters of a Product, ie., the "Lip-and-Rim" area of the vessel, or the decorative
13 materials located on the interior surface of the Product (i.e., the beverage-containing portion) when
14 analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies
15 used by state and federal agencies to determine lead content in a solid substance.

16 **3. MONETARY SETTLEMENT TERMS**

17 **3.1 Civil Penalty Payments**

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

24 **3.2 Reimbursement of Attorney's Fees and Costs**

25 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
26 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
27 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
28 other settlement terms had been finalized, the Parties negotiated the compensation due to Leeman and

1 her counsel under general contract principles and the private attorney general doctrine codified at
2 California Code of Civil Procedure § 1021.5 for all work performed through the mutual execution of
3 this Consent Judgment, and through court approval of the same, but exclusive of fees and costs on
4 appeal, if any. Defendants shall pay \$18,500 for all fees and costs incurred investigating, bringing
5 this matter to Defendants' attention, litigating and negotiating a settlement that provides a significant
6 public benefit.

7 **3.3 Payments Held in Trust**

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

15 3.3.1 A check in the amount of \$3,000 paid to OEHHA;

16 3.3.2 A check in the amount of \$1,000 paid to "Whitney R. Leeman, Ph.D. Client
17 Trust Account";

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

19 **3.4 Payment Address**

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

21 The Chanler Group
22 Attn: Proposition 65 Controller
23 2560 Ninth Street
24 Parker Plaza, Suite 214
25 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,
27 representatives, attorneys, successors, and/or assignees ("Releasers"), and Releasers hereby release
28 any such claims, against PB and Running Press Book Publishers ("Running Press") and their

1 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
2 attorneys, and each entity to whom PB and Running Press directly or indirectly distribute or sells
3 Products, including but not limited to downstream distributors, wholesalers, customers, retailers,
4 franchisees, cooperative members, licensors, licensees, and becker&mayer! LLC,
5 (“becker&mayer!”), including becker&mayer!’s distributors, manufacturers, current and future
6 parents, subsidiaries, and affiliated entities (“Releasees”), based on the failure to warn about alleged
7 exposures to lead contained in Products manufactured, distributed, sold or offered for sale by
8 Releasees in California before the Effective Date, as set forth in the Notice and Complaint.

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

19 **4.2 Leeman’s Individual Release of Claims**

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

26 **4.3 PB’s Release of Leeman**

27 PB, on their own behalf, and on behalf of its past and current agents, representatives,
28 attorneys, successors, and assignees, hereby waives any and all claims against Leeman and her

1 attorneys and other representatives, for any and all actions taken or statements made by Leeman and
2 her attorneys and other representatives, whether in the course of investigating claims, otherwise
3 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

4 **4.4 Mutual Waiver of California Civil Code Section 1542**

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

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

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

17 **5. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and shall
19 be null and void if it is not approved and entered by the Court within one year after it has been fully
20 executed by the Parties, or within such additional time as the Parties may agree to in writing.

21 **6. SEVERABILITY**

22 Except as provided in Section 6 below, if, subsequent to the Court's approval and entry of this
23 Consent Judgment as a judgment, any provision is held by a court to be unenforceable, the validity of
24 the remaining provisions shall not be adversely affected.

25 **7. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the state of California
27 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
28 rendered inapplicable by reason of law generally or as to the Products, and/or as to lead, then PB may

1 provide written notice to Leeman of any asserted change in the law, and shall have no further
2 injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent that, the
3 Products or lead are so affected.

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 CLP PB, LLC:

9 Kenneth Lau, President
10 CLP PB, LLC
11 250 West 57th Street, 15th Floor
12 New York, NY 10107

Kathleen H. Goodhart
Cooley LLP
101 California Street
5th Floor
San Francisco, CA 94111-5800

12 **Leeman:**

13 Proposition 65 Coordinator
14 The Chanler Group
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710-2565

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

20 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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1 **10. POST EXECUTION ACTIVITIES**

2 Leeman agrees to comply with the reporting form requirements referenced in Health and
3 Safety Code § 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
4 § 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
5 Leeman shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
6 employ their best efforts, and those of their counsel, to support the entry of this agreement as
7 judgment, and to obtain judicial approval of their settlement in a timely manner. For purposes of this
8 Section, "best efforts" shall include, at a minimum, supporting the motion for approval, responding to
9 any opposition or objection any third-party may file, if any, and appearing at the hearing before the
10 Court if so requested.

11 **11. MODIFICATION**

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

15 **12. AUTHORIZATION**

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

18
19 **AGREED TO:**

AGREED TO:

20 Date: 10/12/2016

Date: 10-07-16

21
22 By: 

Whitney R. Leeman, Ph.D.

By: 

Kenneth Lau, President
CLP PB, LLC

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