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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF ALAMEDA
11 UNLIMITED CIVIL JURISDICTION
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15 WHITNEY R. LEEMAN, PH.D.,

16 Plaintiff,

17 v.

18 THE DOLLFUS MIEG COMPANY, INC.; *et*
19 *al.*,

20 Defendants.

Case No. RG14746730

[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 The Dollfus Mieg Company, Inc. (“Dollfus”), with Leeman and Dollfus 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 improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

11 Dollfus employs ten or more persons 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 Dollfus manufactures, imports, sells, or distributes for sale in California,
16 vinyl/PVC bracelets, Stitch Bow rolls with vinyl/PVC components, vinyl/PVC binder inserts, and
17 embroidery and needlework storage items containing di(2-ethylhexyl)phthalate (“DEHP”) without
18 first 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 The Dollfus products that are covered by this Consent Judgment are defined as vinyl/PVC
23 bracelets, Stitch Bow rolls with vinyl/PVC components, vinyl/PVC binder inserts, and embroidery
24 and needlework storage items containing DEHP including, but not limited to, *Prism AMP’d!*
25 *Reflective Snap Bracelet, PRIAMPD, UPC #0 77540 38822 6, Creative World DMC Stitch Bow Mini*
26 *Binder Inserts, Article No. U1335L, UPC #0 77540 91206 3, the Creative World DMC Stitch Bow*
27 *Roll, Art. No. U1637, UPC #0 77540 19922 8, Door Hanging Needlework Storage System, U1633,*
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1 and Armchair Organizer, U1634 which are manufactured, imported, distributed, sold and/or offered
2 for sale by Dollfus in the State of California, hereinafter collectively referred to as the “Products.”

3 **1.6 Notices of Violation**

4 On or about February 26, 2014, Leeman served Dollfus, others, and certain requisite public
5 enforcement agencies with “60-Day Notice of Violation” (“February, 2014 Notice”) alleging that
6 Dollfus was in violation of Proposition 65 for failing to warn its customers and consumers in
7 California that the vinyl/PVC bracelets expose users to DEHP. Based on further investigation, on
8 August 28, 2014 Leeman also issued a “Supplemental 60-Day Notice of Violation” (“August, 2014
9 Notice”) to Dollfus alleging that certain additional Products (the vinyl/PVC binder inserts, and stitch
10 bow rolls with vinyl/PVC components) contain and expose Californians to DEHP. Based on further
11 investigation, on January 23, 2015 Leeman also issued a “Second Supplemental 60-Day Notice of
12 Violation” (“January, 2015 Notice”) to Dollfus alleging that certain additional Products (Embroidery
13 and needlework storage systems) contain and expose Californians to DEHP. The February, 2014
14 Notice, the August, 2014 Notice and the January 2015 Notice shall collectively be referred to as the
15 “Notices.”

16 **1.7 Complaint**

17 On November 3, 2014, Leeman filed the instant action (“Complaint”), naming Dollfus as a
18 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
19 the Notices. Upon entry of this Consent Judgment, the Complaint shall be deemed amended *nunc*
20 *pro tunc* to include the violations of Proposition 65 alleged by Leeman in the January, 2015 Notice.

21 **1.8 No Admission**

22 Dollfus denies the material, factual, and legal allegations contained in the Notices and
23 Complaint, and maintains that all of the products that it has sold and distributed for sale in California,
24 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
25 Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of law, or
26 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an
27 admission of any fact, finding, conclusion of law, issue of law, or violation of law. This Section shall
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1 not, however, diminish or otherwise affect Dollfus’ obligations, responsibilities, and duties under this
2 Consent Judgment.

3 **1.9 Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over Dollfus as to the allegations in the Complaint, that venue is proper in the County of
6 Alameda, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
7 Judgment.

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
10 the Court approves this Consent Judgment.

11 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

12 **2.1 Reformulated Products**

13 Commencing on the Effective Date, and continuing thereafter, Dollfus shall only purchase,
14 manufacture, or import for sale in California “Reformulated Products” or Products that contain
15 reasonable health hazard warnings as set forth in Section 2.2. For purposes of this Consent
16 Judgment, “Reformulated Products” are Products that contain DEHP in concentrations of less than
17 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection
18 Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or
19 state agencies for the purpose of determining the DEHP content in a solid substance.

20 **2.2 Product Warnings**

21 Commencing on the Effective Date, Dollfus shall not sell or ship for sale in California any
22 Products unless Dollfus provides a clear and reasonable warning as set forth in subsections 2.2(a) and
23 (b), or such Product is a Reformulated Product. Each warning shall be prominently placed with such
24 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
25 to be read and understood by an ordinary individual under customary conditions before purchase or
26 use. Each warning shall be provided in a manner such that the consumer or user understands to
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1 which *specific* Product the warning applies, so as to minimize the risk of consumer confusion.

2 Reformulated Products do not require a warning under this Consent Judgment.

3 **(a) Retail Store Sales.**

4 Dollfus shall affix a warning to the packaging, labeling, or directly on each Product provided
5 for sale in retail outlets in California that is not a Reformulated Product and shall state:

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

8 **(b) Internet Sales.** In the event that Dollfus sells Products that are not Reformulated
9 Products via the internet to customers located in California after the Effective Date, Dollfus shall
10 provide the following warning for such Products on the same web page on which a Product is
11 displayed:

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

14 **3. MONETARY SETTLEMENT TERMS**

15 **3.1 Civil Penalty Payments**

16 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
17 to in this Consent Judgment, Dollfus shall pay \$20,000 in civil penalties. Each civil penalty payment
18 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-
19 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
20 Assessment (“OEHHA”) by Leeman.

21 **3.1.1 Initial Civil Penalty**

22 Within ten days of the Effective Date, Dollfus shall make an initial civil penalty payment of
23 \$6,000. It shall provide its payment made payable to: “Whitney R. Leeman Client Trust Account” in
24 the amount of \$6,000.

25 **3.1.2 Final Civil Penalty**

26 On or before December 30, 2015, Dollfus shall make a final civil penalty payment of \$14,000.
27 Pursuant to title 11 California Code of Regulations, section 3203(c), Leeman agrees that the final
28 civil penalty payment shall be waived in its entirety if, no later than December 15, 2015, an officer of

1 Dollfus provides Leeman with written certification that all of the Products purchased for sale or
2 manufactured for sale in California as of the date of such certification are Reformulated Products as
3 defined by Section 2.1, and that Dollfus will continue to manufacture, purchase, or import only
4 Reformulated Products for sale in California in the future. The option to certify reformulation in lieu
5 of making the final civil penalty payment required by this Section is a material term and time is of the
6 essence.

7 **3.2 Reimbursement of Fees and Costs**

8 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
9 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
10 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
11 other settlement terms had been finalized, Dollfus expressed a desire to resolve Leeman's fees and
12 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman
13 and her counsel under general contract principles and the private attorney general doctrine codified at
14 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
15 execution of this Consent Judgment. Dollfus shall pay \$34,000 for the fees and costs incurred
16 investigating, litigating, and enforcing this matter, including the fees and costs incurred (and to be
17 incurred) drafting, negotiating, and obtaining the Court's approval of this Consent Judgment in the
18 public interest.

19 **3.3 Payment Procedures**

20 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
21 this Consent Judgment are to be delivered within ten days of the Effective Date according to the
22 following subsections.

23 **3.3.1 Payment Addresses**

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

26 The Chanler Group
27 Attn: Proposition 65 Controller
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

1 **4. CLAIMS COVERED AND RELEASED**

2 **4.1 Leeman’s Public Release of Proposition 65 Claims**

3 Leeman, acting on her own behalf and in the public interest, releases Dollfus and its parents,
4 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
5 attorneys and each entity to whom it directly or indirectly distributes or sells the Products, including
6 but not limited to its downstream distributors, wholesalers, customers, retailers, franchisers,
7 cooperative members, licensors, and licensees, and each of their successors and assigns
8 (“Releasees”) for violations arising under Proposition 65 for unwarned exposures to DEHP from the
9 Products sold by Dollfus prior to the Effective Date, as set forth in the Notices. Compliance with
10 the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
11 exposures to DEHP from the Products sold by Dollfus before the Effective Date.

12 **4.2 Leeman’s Individual Release of Claims**

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

19 **4.3 Dollfus Release of Leeman**

20 Dollfus, on its own behalf, and on behalf of its past and current agents, representatives,
21 attorneys, successors, and assignees, hereby waives any and all claims against Leeman and her
22 attorneys and other representatives, for any and all actions taken or statements made by Leeman and
23 her attorneys and other representatives, whether in the course of investigating claims, otherwise
24 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.
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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, preempted, or is
12 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Dollfus may
13 provide written notice to Leeman of any asserted change in the law, and shall have no further
14 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
15 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Dollfus from any
16 obligation to comply with any pertinent state or federal toxics control laws.

17 **8. NOTICE**

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

21 For Dollfus:

22 Joseph N. Zawadzki, CFO
23 The Dollfus Mieg Company, Inc.
24 10 Basin Drive, Suite 130
Kearny, NJ 07032

25 With a copy to:

26 Jeffrey Margulies, Esq.
27 Norton Rose Fulbright US LLP
28 555 South Flower Street, Forty-First Floor,
Los Angeles, California 90071

1 For Leeman:

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

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

9 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

13 **10. POST EXECUTION ACTIVITIES**

14 Leeman agrees to comply with the reporting form requirements referenced in Health and
15 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
16 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent
17 Judgment, which Motion Leeman shall draft and file with the Court. Dollfus shall support the entry
18 of this Consent Judgment, including appearing at the hearing on the Motion if requested.

19 If this Consent Judgment is not approved by the Court in its entirety, (a) this Consent
20 Judgment and any and all prior agreements between the parties as to the Notices or Complaint
21 referenced herein shall terminate and become null and void, and the action shall revert to the status
22 that existed prior to the execution date of this Consent Judgment; (b) no term of this Consent
23 Judgment or any draft thereof, or of the negotiation, documentation, or other part or aspect of the
24 Parties' settlement discussions, shall have any effect, nor shall any such matter be admissible in
25 evidence for any purpose in this action, or in any other proceeding; and (c) the parties agree to meet
26 and confer to determine whether to modify the terms of the Consent Judgment and to resubmit it for
27 approval.
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1 **11. MODIFICATION**

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

5 **12. AUTHORIZATION**

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

8
9 **AGREED TO:**

AGREED TO:

10 Date: 3/13/15

Date: _____

11
12 By: *Whitney R. Leeman*
13 WHITNEY R. LEEMAN

By: _____
Joseph Zawadzki, CFO
The Dollfus Mieg Company, Inc.

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4 Party, and the entry of a modified consent judgment by the Court.

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6 The undersigned are authorized to execute this Consent Judgment and have read, understood,
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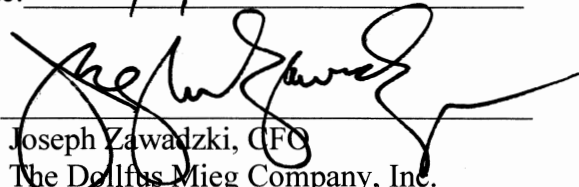
8
9 **AGREED TO:**

10 Date: _____

11
12 By: _____
13 WHITNEY R. LEEMAN

AGREED TO:

10 Date: 3/16/15

11
12 By: 
13 Joseph Zawadzki, CFO
14 The Dollfus Mieg Company, Inc.