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2 Christopher Tuttle, State Bar No. 264545
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
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9 Attorneys for Plaintiff
10 WHITNEY R. LEEMAN, PH.D.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D.

Plaintiff,

v.

ENERMAX USA CORPORATION, *et al.*,

Defendants.

Case No. 16CV290343

[PROPOSED] CONSENT JUDGMENT

Cal. Health & Safety Code § 25249.6 et seq. and
Cal. 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 defendant Ecomaster Technology Corp., fka Enermax USA Corporation
5 ("Ecomaster"), with Leeman and Ecomaster each individually referred to as a "Party" and
6 collectively as the "Parties."

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Leeman contends, and Ecomaster disputes, that Ecomaster employs ten or more individuals
13 and is a "person in the course of doing business" for purposes of the Safe Drinking Water and Toxic
14 Enforcement Act of 1986, Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

15 **1.4 General Allegations**

16 Leeman alleges that Ecomaster manufactures, imports, sells, or distributes for sale in
17 California, vinyl/PVC earphone cords that contain di(2-ethylhexyl) phthalate ("DEHP") without first
18 providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition
19 65 as a chemical known to the State of California to cause birth defects or other reproductive harm.

20 **1.5 Product Description**

21 The products covered by this Consent Judgment are defined as vinyl/PVC earphone cords
22 containing DEHP that are manufactured, imported, sold, or distributed for sale in California by
23 Ecomaster including, but not limited to, the *DreamBass Audio with Built-in Amplifier & Earphone,*
24 *AP001E, UPC #8 16163 00540 6*, hereinafter the "Products."

25 **1.6 Notices of Violation**

26 On October 28, 2015, Leeman served Ecomaster and the requisite public enforcement
27 agencies with a 60-Day Notice of Violation ("Notice") that provided the recipients with notice that
28 Ecomaster violated California Health & Safety Code § 25249.6 when it failed to warn its customers

1 and consumers in California that its Products expose users to DEHP. No public enforcer has
2 commenced and is diligently prosecuting an action to enforce the violations alleged in the Notice.

3 **1.7 Complaint**

4 On February 8, 2016, Leeman filed the instant action (“Complaint”), naming Ecomaster as a
5 defendant for the alleged violations of Health and Safety Code section 25249.6 that are the subject of
6 the Notice.

7 **1.8 No Admission**

8 Ecomaster denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and it maintains that all of the products that it has sold and distributed for sale in
10 California, including the Products, have been and are in compliance with all laws. Nothing in this
11 Consent Judgment shall be construed as an admission by Ecomaster of any fact, finding, conclusion
12 of law, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute
13 or be construed as an admission by Ecomaster of any fact, finding, conclusion of law, issue of law, or
14 violation of law. This Section shall not, however, diminish or otherwise affect Ecomaster’s
15 obligations, responsibilities, and duties under this Consent Judgment.

16 **1.9 Consent to Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Ecomaster as to the allegations contained in the Complaint, that venue is proper in
19 the County of Santa Clara, and that the Court has jurisdiction to enter and enforce the provisions of
20 this Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
23 the Court approves this Consent Judgment, including any unopposed tentative ruling granting
24 approval of this Consent Judgment.

25 **2. INJUNCTIVE RELIEF: REFORMULATION**

26 **2.1 Reformulated Products**

27 Commencing on the Effective Date and continuing thereafter, Ecomaster shall only
28 manufacture for sale, purchase for sale, or import for sale in California, “Reformulated Products.”

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

5 **3. MONETARY SETTLEMENT TERMS**

6 **3.1 Civil Penalty Payments**

7 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
8 this Consent Judgment, Ecomaster shall pay \$15,000 in civil penalties, as set forth in section 3.1.1
9 and 3.1.2 below. Each civil penalty payment will be allocated in accordance with California Health
10 and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the
11 California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25%
12 of the penalty amount paid to Plaintiff.

13 **3.1.1 Initial Civil Penalty**

14 Ecomaster shall pay an initial civil penalty in the amount of \$5,000. Defendant will provide
15 its payment in a single check made payable to “Whitney R. Leeman, Client Trust Account.”
16 Leeman’s counsel shall be responsible for remitting International’ penalty payment(s) under this
17 settlement to OEHHA.

18 **3.1.2 Final Civil Penalty**

19 On or before November 15, 2016, Ecomaster shall make a final civil penalty payment
20 of \$10,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Leeman agrees that
21 the final civil penalty payment shall be waived in its entirety if, no later than November 1, 2016, an
22 authorized representative of Ecomaster provides Leeman with written certification that all of the
23 Products it is selling or distributing for sale in California as of the date of such certification are
24 Reformulated Products as defined by Section 2.1, and that Ecomaster will continue to offer only
25 Reformulated Products for sale in California in the future. The option to certify reformulation in lieu
26 of making the final civil penalty payment required by this Section is a material term and time is of the
27 essence. Ecomaster shall deliver its certificate, if any, to Leeman’s counsel at the address provided in
28 Section 3.4, below. In the event that Ecomaster does not timely certify its compliance or make the

1 final civil penalty payment required by this Section, the Parties agree that Leeman may file a motion
2 or application seeking an order compelling Ecomaster's compliance with this Section. In the event
3 the final civil penalty payment becomes due prior to the Effective Date, then Ecomaster shall deliver
4 the final civil penalty payment to its attorney to be held in trust until, and disbursed within two days
5 after the Effective Date.

6 **3.2 Reimbursement of Attorney's Fees and Costs**

7 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
8 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
9 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
10 other settlement terms had been finalized, Ecomaster expressed a desire to resolve Leeman's fees and
11 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman
12 and her counsel under general contract principles and the private attorney general doctrine codified at
13 California Code of Civil Procedure section 1021.5 for all work performed through court approval of
14 this Consent Judgment. Ecomaster shall issue a check to "The Chanler Group" in the amount of
15 \$30,000, pursuant to the payment procedures in Section 3.3 below, and to the address found in
16 Section 3.4 below.

17 **3.3 Payments Held in Trust**

18 Except the final civil penalty payment required by Section 3.1.2, all payments due under this
19 agreement shall be delivered within two (2) days of the date that this Consent Judgment is fully
20 executed by the Parties, and held in trust by Ecomaster's counsel until the Court grants the motion
21 for approval of this Consent Judgment. Within two business days of the Court's approval of this
22 Consent Judgment, Ecomaster's counsel shall tender the initial civil penalty payments and attorneys'
23 fee and costs reimbursements required by Sections 3.1.1 and 3.2. In the event the final civil penalty
24 payment becomes due prior to the Effective Date, then Ecomaster shall deliver the final civil penalty
25 payment to its attorney to be held in trust until, and disbursed within two days after the Effective
26 Date.

1 **3.4 Payment Address**

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

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

8 **4. CLAIMS COVERED AND RELEASED**

9 **4.1 Leeman’s Public Release of Proposition 65 Claims**

10 Leeman, acting on her own behalf and in the public interest, releases Ecomaster and its
11 parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees,
12 and attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
13 Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers,
14 franchisers, resellers, cooperative members, licensors and licensees (“Downstream Releasees”) for
15 any violations arising under Proposition 65 for unwarned exposures to DEHP from Products sold by
16 Ecomaster prior to the Effective Date, as set forth in the Notice.

17 **4.2 Leeman’s Individual Release of Claims**

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

25 **4.3 Ecomaster’s Release of Leeman**

26 Ecomaster, on its own behalf, and on behalf of its past and current agents, representatives,
27 attorneys, successors, and assignees, hereby waives any and all claims against Leeman and her
28 attorneys and other representatives, for any and all actions taken or statements made by Leeman and

1 her attorneys and other representatives, whether in the course of investigating claims, otherwise
2 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

3 **4.4 Representations**

4 Ecomaster represents that the sales data for the Products and other information it provided to
5 Leeman is truthful to the best of its knowledge and a material factor upon which Leeman has relied to
6 determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7 in this
7 Settlement Agreement. If, within twelve months of the Effective Date, Leeman discovers and
8 presents to Ecomaster, evidence demonstrating that the preceding representation and warranty was
9 materially inaccurate, then Ecomaster shall have 30 days to meet and confer regarding Leeman's
10 contention. Should this 30-day period pass without any such resolution between Leeman and
11 Ecomaster, Leeman may pursue any remedies to which she claims to be entitled.

12 **5. COURT APPROVAL**

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

16 **6. SEVERABILITY**

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

20 **7. GOVERNING LAW**

21 The terms of this Consent Judgment shall be governed by the laws of the state of California
22 and apply within the state of California. In the event that Proposition 65 is repealed, or is otherwise
23 rendered inapplicable by reason of law generally, or as to the Products, then Ecomaster may provide
24 written notice to Leeman of any asserted change in the law, and shall have no further injunctive
25 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
26 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,
4 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

5 For Ecomaster:

6 Steven Su, President
7 Ecomaster Technology Corp.
8 14020 Central Avenue, Suite 500
9 Chino, CA 91710

10 with a copy to Ecomaster's counsel:

11 Jeffrey Margulies
12 Norton Rose Fulbright US LLP
13 555 South Flower Street, 41st Floor
14 Los Angeles, CA 90071

15 For Leeman:

16 The Chanler Group
17 Attention: Prop 65 Coordinator
18 2560 Ninth Street
19 Parker Plaza Suite 214
20 Berkeley CA, 94710

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

23 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

27 **10. POST EXECUTION ACTIVITIES**

28 Leeman agrees to comply with the reporting form requirements referenced in Health and
Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement.
Leeman and Ecomaster agree to support the entry of this agreement as judgment, and to obtain
judicial approval of their settlement in a timely manner.

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 thereon by the Court; or (ii) a successful motion or application
4 of any Party, and the entry of a modified consent judgment thereon by the Court.

5 **12. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment on behalf of their respective
7 Parties and acknowledge that they have read, understood, and agree to all of the terms and conditions
8 contained herein.

9 **AGREED TO:**

AGREED TO:

10 Date: 9/22/16

Date: _____

11 By: *Whitney Leeman*

By: _____

12 WHITNEY R. LEEMAN, PH.D.

13 Steven Su, President
14 ECOMASTER TECHNOLOGY CORP. FKA
15 ENERMAX USA CORPORATION

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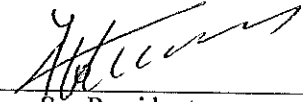
AGREED TO:

AGREED TO:

Date: _____

Date: Oct. 5, 2016

By: _____
WHITNEY R. LEEMAN, PH.D.

By:  _____
Steven Su, President
ECOMASTER TECHNOLOGY CORP. FKA
ENERMAX USA CORPORATION