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WHITNEY R. LEEMAN, PH.D.

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

WHITNEY R. LEEMAN, PH.D.

Plaintiff,

v.

JACK'S MFG., INC.; and DOES 1-150,
inclusive,

Defendants.

Case No. RG14748657

[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, Ph.D.
4 (“Leeman”) and defendant Jack’s Mfg., Inc. (“Jack’s”), with Leeman and Jack’s each referred to
5 individually as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Leeman is a resident of the State of California who seeks to promote awareness of
8 exposures to toxic chemicals, and to improve human health by reducing or eliminating harmful
9 substances contained in consumer and commercial products.

10 **1.3 Defendant**

11 Jack’s 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, California Health and
13 Safety Code section 25249.5 *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Leeman alleges that Jack’s manufactures, imports, sells and/or distributes for sale in
16 California, riding crops with vinyl/PVC handles containing di(2-ethylhexyl)phthalate (“DEHP”),
17 and that it does so without providing the health hazard warning that Leeman alleges is required by
18 Proposition 65.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are riding crops with vinyl/PVC handles
21 containing DEHP, including, but not limited to, the *Riding Crop with Hand Loop, 24 Inch, #31,*
22 *UPC #8 40539 04559 8* manufactured, distributed, imported, sold and/or offered for sale in the state
23 of California by Jack’s.

24 **1.6 Notices of Violation**

25 On February 26, 2014, Leeman served Jack’s and the requisite public enforcement agencies
26 with a 60-Day Notice of Violation (“Notice”), alleging that Jack’s violated Proposition 65 when it
27 failed to warn its customers and consumers in California that the Products expose users to DEHP.
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1 To the best of the Parties' knowledge, no public enforcer has commenced and is diligently
2 prosecuting an action to enforce the allegations set forth in the Notice.

3 **1.7 Complaint**

4 November 18, 2014, Leeman commenced the instant action, naming Jack's as a defendant
5 for the alleged violations of Proposition 65 that are the subject of the Notice.

6 **1.8 No Admission**

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

15 **1.9 Jurisdiction**

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

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date that
22 the Court grants the motion for approval of this Consent Judgment contemplated by Section 5.

23 **2. INJUNCTIVE SETTLEMENT TERMS**

24 Commencing July 15, 2015, and continuing thereafter, Jack's shall only order, or cause to
25 be ordered, for sale in California, Reformulated Products. For purposes of this Consent Judgment,
26 "Reformulated Products" are defined as Products with a maximum DEHP concentration 0.1 percent
27 (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing
28

1 methodologies 3580A and 8270C, or other methodologies utilized by state or federal agencies for
2 the purpose of determining DEHP content in a solid substance.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Payments Pursuant to Health and Safety Code § 25249.7(b)(2)**

5 Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all the
6 claims referred to in this Consent Judgment, Jack's shall pay \$10,000 in civil penalties in
7 accordance with this Section. Each penalty payment will be allocated in accordance with California
8 Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California
9 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the
10 penalty remitted to Leeman. Leeman's counsel shall be responsible for remitting Jack's' penalty
11 payment(s) under this Consent Judgment to OEHHA.

12 **3.1.1 Initial Civil Penalty.** Jack's shall make an initial civil penalty payment of
13 \$3,500. Jack's shall provide its payment in a single check made payable to "Whitney R. Leeman,
14 Ph.D., Client Trust Account" to be delivered to the address provided in Section 3.4, below.

15 **3.1.2 Final Civil Penalty.** On December 1, 2015, Jack's shall make a final civil
16 penalty payment of \$6,500. Pursuant to title 11 California Code of Regulations, section 3203(c),
17 Leeman agrees that the final civil penalty payment shall be waived in its entirety if, no later than
18 November 15, 2015, an officer of Jack's provides Leeman with a signed declaration certifying that
19 as of November 15, 2015, and continuing thereafter, Jack's shall only manufacture, import,
20 distribute, sell and/or offer for sale in California, Reformulated Products. The option to certify in
21 lieu of making the final civil penalty payment otherwise required by this Section is a material term,
22 and time is of the essence. To obtain a waiver of the final civil penalty, Jack's must deliver its
23 declaration certifying reformulation to Leeman's counsel at the address provided in Section 3.4,
24 below. In the event that Jack's does not timely certify its compliance or make the final civil penalty
25 payment required by this Section, the Parties agree that Leeman may file a motion or application
26 seeking an order compelling Jack's' compliance with this Section. If successful, the Parties further
27 agree that Leeman shall be entitled to her reasonable attorneys' fees and costs pursuant to general
28 contract principles and Code of Civil Procedure section 1021.5.

1 **3.2 Reimbursement of Attorneys' Fees and Costs**

2 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 the issue to be resolved after the material terms of the agreement had been settled. Shortly after
5 the other settlement terms had been finalized, Jack's expressed a desire to resolve Leeman's fees
6 and costs. The Parties then negotiated a resolution of the compensation due to Leeman and her
7 counsel under general contract principles and the private attorney general doctrine codified at
8 California Code of Civil Procedure § 1021.5. For all work performed through the mutual
9 execution of this agreement and the Court's approval of the same, but exclusive of fees and costs
10 on appeal, if any, Jack's shall reimburse Leeman and her counsel \$26,750. Jack's' payment shall
11 be delivered to the address in Section 3.4 in the form of a check payable to "The Chanler Group."
12 The reimbursement shall cover all fees and costs incurred by Leeman investigating, bringing this
13 matter to Jack's' attention, litigating, and negotiating a settlement of the matter in the public
14 interest.

15 **3.3 Payment Timing; Payments Held In Trust**

16 With the exception of the final civil penalty payment required by Section 3.1.2, Jack's shall
17 deliver all payments required by this Consent Judgment to its counsel within one week of the date
18 that this agreement is fully executed by the Parties. Jack's' counsel shall confirm receipt of
19 settlement funds in writing to Leeman's counsel and, thereafter, hold the amounts paid in trust
20 until such time as the Court grants the motion for approval of the Parties' settlement contemplated
21 by Section 5. Within two days of the Effective Date, Jack's' counsel shall deliver all settlement
22 payments it has held in trust to Leeman's counsel at the address provided in Section 3.4. In the
23 event the final civil penalty payment required by Section 3.1.2 becomes due prior to the Effective
24 Date, then Jack's shall deliver the final civil penalty payment to its attorney to be held in trust
25 until, and disbursed within two days after, the Effective Date.

26 **3.4 Payment Address**

27 All payments required by this Consent Judgment shall be delivered to the following
28 address:

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

4. CLAIMS COVERED AND RELEASED

4.1 Leeman's Release of Proposition 65 Claims

Leeman, acting on her own behalf and in the public interest, releases Jack's and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys ("Releasees") and each entity to whom Jack's directly or indirectly distributes or sells the Products including, but not limited to, its downstream distributors, wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream Releasees") for any violations arising under Proposition 65 for unwarned exposures to DEHP from the Products manufactured, imported, distributed or sold by Jack's prior to the Effective Date, as set forth in the Notice. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 by Jack's with respect to the alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or distributed for sale by Jack's after the Effective Date.

4.2 Leeman's Individual Release of Claims

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

4.3 Jack's' Release of Leeman

Jack's, on its own behalf and on behalf of its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives any and all claims against Leeman and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Leeman and her attorneys and other representatives in the

1 course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with
2 respect to the Products.

3 **5. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and
5 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
6 after it has been fully executed by all Parties. Leeman and Jack's agree to support the entry of this
7 agreement as a judgment, and to obtain the Court's approval of their settlement in a timely manner.
8 The Parties acknowledge that, pursuant to California Health and Safety Code section 25249.7(f), a
9 noticed motion is required for judicial approval of this Consent Judgment, which motion Leeman
10 shall draft and file and Jack's shall support, appearing at the hearing if so requested. If any third-
11 party objection to the motion is filed, Leeman and Jack's agree to work together to file a reply and
12 appear at any hearing. This provision is a material component of the Consent Judgment and shall
13 be treated as such in the event of a breach.

14 **6. SEVERABILITY**

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

18 **7. GOVERNING LAW**

19 The terms of this Consent Judgment shall be governed by the laws of the State of California
20 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or
21 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Jack's
22 may provide Leeman with written notice of any asserted change in the law, and shall have no
23 further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
24 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Jack's
25 from its obligation to comply with any pertinent state or federal law or regulation.

26 **8. NOTICE**

27 Unless specified herein, all correspondence and notice required by this Consent Judgment
28 shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail,

1 return receipt requested; or (iii) a recognized overnight courier to any Party by the other at the
2 following addresses:

3 To Jack's:

4 Bradley E. Jewett, Esq.
5 Sanders Roberts & Jewett
6 1055 West 7th Street
7 Suite 3050
Los Angeles, CA 90017

To Leeman:

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

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

10 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

14 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

15 Leeman and her counsel agree to comply with the reporting form requirements referenced in
16 California Health and Safety Code section 25249.7(f).

17 **11. MODIFICATION**

18 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
19 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
20 any party and the entry of a modified Consent Judgment by the Court thereon.

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12. AUTHORIZATION

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:

WHITNEY R. LEEMAN, PH.D.

Dated: _____

AGREED TO:

JACK’S MFG., INC.

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____

1 **12. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.
5

6 **AGREED TO:**

7 Whitney Leeman
8 WHITNEY R. LEEMAN, PH.D.

9 Dated: 7/29/15

AGREED TO:

JACK'S MFG., INC.

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____

1 **12. AUTHORIZATION**

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

5
6 **AGREED TO:**

7 _____
8 WHITNEY R. LEEMAN, PH.D.

9 Dated: _____

10 **AGREED TO:**

11 x Jacks Mfg Inc by Steve Balahtsis
12 JACK'S MFG., INC.

13 By: Steve Balahtsis

14 (Print Name)

15 Its: President

16 (Title)

17 Dated: 7-28-15