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SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D.,

Plaintiff,

v.

LAROSE INDUSTRIES LLC; and DOES 1-150, inclusive,

Defendants.

Case No. RG-16-811417

[PROPOSED]CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.* and Code of Civil Procedure § 664.6)

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between plaintiff WHITNEY R. LEEMAN, PH.D., ("Leeman") and defendant LAROSE INDUSTRIES LLC ("LaRose"), with Leeman and LaRose each referred to individually as a "Party" and collectively as the "Parties."

1.2 Plaintiff

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

1.3 Defendant

LaRose employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.5 *et seq*. ("Proposition 65").

1.4 General Allegations

Leeman alleges that LaRose manufactures, imports, sells and/or distributes for sale in California, vinyl/PVC speaker cords containing Di(2-ethylhexyl)phthalate ("DEHP"). DEHP is listed pursuant to Proposition 65 as a chemical known to cause birth defects and other reproductive harm. Leeman alleges that LaRose failed to provide the health hazard warning allegedly required by Proposition 65 for exposures to DEHP from its vinyl/PVC speaker cords.

1.5 Product Description

The products covered by this Consent Judgment are vinyl/PVC speaker cords containing DEHP sold and/or distributed for sale in California by LaRose including, but not limited to, *My Look Cra-Z-Art Crazy Lights Magic Water Speakers, #46590, BDIP-004814A27-0414, UPC #8 84920 46590 9* ("Products").

1.6 Notice of Violation

On August 20, 2015, Leeman served LaRose and certain requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that LaRose violated Proposition 65 when it failed to warn its customers and consumers in California that the Products expose users

to DEHP. To the best of the Parties' knowledge, no public enforcer has commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

1.7 Complaint

On April 13, 2016, Leeman commenced the instant action, naming LaRose as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1.8 No Admission

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

1.9 Jurisdiction

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

1.10 Effective Date

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

2. INJUNCTIVE SETTLEMENT TERMS

2.1 Reformulation Commitment

On or before the Effective Date and continuing thereafter, LaRose agrees to only manufacture for sale or purchase for sale in or into California, "Reformulated Products" or Products that contain a warning in accordance with Section 2.2 below. For purposes of this Settlement Agreement, "Reformulated Products" are Products containing DEHP in concentrations less than

1,000 parts per million ("ppm") (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodology utilized by federal or state governmental agencies for the purpose of determining DEHP content in a solid substance.

2.2 Clear and Reasonable Warnings

On or before the Effective Date, LaRose shall, for all Products it ships, sells, or offers to ship or sell in California that are not Reformulated Products, provide clear and reasonable warnings as set forth below. Each warning shall be prominently placed with such conspicuousness, as compared with other words, statements, designs, or devices, as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which specific Products the warning applies, so as to minimize the risk of consumer confusion. The warning shall be affixed to the packaging or labeling or directly to the non-Reformulated Product. The warning shall provide:

> **WARNING:** This product contains DEHP, a chemical known to the State [of California] to cause birth defects and other reproductive harm.

Or, if LaRose has a good faith belief that the Product contains additional listed chemicals that are listed as carcinogens, the warning may provide:

> WARNING: This product can expose you to chemicals including [name of one or more chemicals], which is [are] known to the State of California to cause cancer, and [name of one or more chemicals], which is [are] known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

3. MONETARY SETTLEMENT TERMS

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

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims referred to in this Consent Judgment, LaRose shall pay $2,000 in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of

Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Leeman. Leeman's counsel shall be responsible for remitting LaRose's penalty payment(s) under this Consent Judgment to OEHHA.

3.2 Reimbursement of Attorneys' Fees and Costs

The Parties acknowledge that Leeman and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, LaRose expressed a desire to resolve Leeman's fees and costs. The Parties then negotiated a resolution of the compensation due to Leeman and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure § 1021.5. For all work performed through the mutual execution of this agreement and the Court's approval of the same, but exclusive of fees and costs on appeal, if any, LaRose shall reimburse Leeman and her counsel $23,000. LaRose's payment shall be delivered to the address in Section 3.4 in the form of a check payable to "The Chanler Group." The reimbursement shall cover all fees and costs incurred by Leeman investigating, bringing this matter to LaRose's attention, litigating, and negotiating a settlement of the matter in the public interest.

3.3 Payment Timing; Payments Held In Trust

LaRose shall deliver all payments required by this Consent Judgment to its counsel within one week of the date that this agreement is fully executed by the Parties. LaRose's counsel shall confirm receipt of settlement funds in writing to Leeman's counsel and, thereafter, hold the amounts paid in trust until such time as the Court grants the motion for approval of the Parties' settlement contemplated by Section 5. Within two days of the Effective Date, LaRose's counsel shall deliver all settlement payments it has held in trust to Leeman's counsel at the address provided in Section 3.4.

3.4 Payment Address

All payments required by this Consent Judgment shall be delivered to the following 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 LaRose and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, and attorneys ("Releasees") and each entity to whom LaRose 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 LaRose 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 LaRose with respect to the alleged or actual failure to warn about exposures to DEHP from Products manufactured, sold or distributed for sale by LaRose 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 LaRose before the Effective Date.

4.3 LaRose's Release of Leeman

LaRose, 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 by Leeman and

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

5. COURT APPROVAL

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

6. SEVERABILITY

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

7. GOVERNING LAW

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then LaRose may provide Leeman with written notice of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products are so affected.

8. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class,

registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For LaRose:

Lawrence Rosen, President
LaRose Industries LLC
1578 Sussex Turnpike, Building 5
Randolph, NJ 07869

For Leeman:

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

with copy to LaRose's counsel:

Anthony J. Cortez, Esq.
Greenberg Traurig LLP
1200 K Street, Suite 1100
Sacramento, CA 95814

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

9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

10. COMPLIANCE WITH REPORTING REQUIREMENTS

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

11. MODIFICATION

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

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: 4/4/2017

AGREED TO:

LAROSE INDUSTRIES LLC

By: _____
(Print Name)

Its: _____
(Title)

Dated: _____

AGREED TO:

WHITNEY R. LEEMAN PH.D.

Dated: _____

AGREED TO:

LAROSE INDUSTRIES LLC

By: Randall J. Tamo
(Print Name)

Its: C.O.O
(Title)

Dated: 4/10/17