

1 Clifford A. Chanler, State Bar No. 135534  
David S. Lavine, State Bar No. 166744  
2 HIRST & CHANLER LLP  
2560 Ninth Street  
3 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565  
4 Telephone: (510) 848-8880  
Facsimile (510) 848-8118  
5

6 Attorneys for Plaintiff  
WHITNEY R. LEEMAN, Ph.D.

7 Lawrence Campitiello, State Bar No. 110274  
McCOLLOCH & CAMPITIELLO LLP  
8 5900 La Place Court #100  
Carlsbad, CA 92008  
9 Telephone: (760) 804-0153  
Facsimile: (760) 931-9086  
10

11 Attorneys for Defendant  
LEGOLAND CALIFORNIA, LLC

12  
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
14 COUNTY OF SAN DIEGO – NORTH COUNTY DIVISION  
15 UNLIMITED JURISDICTION  
16

17 WHITNEY R. LEEMAN, Ph.D.,  
18 Plaintiff,  
19 v.  
20 LEGOLAND CALIFORNIA, LLC, and DOES 1  
21 through 150, inclusive,  
22 Defendants.  
23

Case No. 34-2008-00052624

**STIPULATION AND [PROPOSED]  
ORDER RE: CONSENT JUDGMENT**

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1       **1. INTRODUCTION**

2           1.1       **Plaintiff and Settling Defendant.** This Consent Judgment (“Consent  
3 Judgment” or “Agreement”) is entered into by and between plaintiff Whitney R. Leeman, Ph.D.  
4 (hereafter “Leeman” or “Plaintiff”) and Settling Defendant Legoland California, LLC (hereafter  
5 “Legoland” or “Settling Defendant”), with Plaintiff and Settling Defendant collectively referred  
6 to as the “Settling Parties” and Leeman and Settling Defendant each being a “Party.”

7           1.2       **Plaintiff.** Leeman is an individual residing in California who seeks to promote  
8 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating  
9 hazardous substances contained in consumer and industrial products.

10          1.3       **Settling Defendant.** Legoland is a defendant named in the complaint, and is a  
11 corporation that employs more than ten persons, and which manufactures, distributes and/or sells  
12 Products as defined in section 1.5 in the State of California or has done so in the past.

13          1.4       **General Allegations.** Plaintiff alleges that Settling Defendant has  
14 manufactured, distributed and/or sold in the State of California certain flame-broiled hamburgers  
15 containing benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and  
16 indeno[1,2,3-cd]pyrene, which are chemicals listed pursuant to the Safe Drinking Water and  
17 Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.*, also known  
18 as Proposition 65, to cause cancer. Benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene,  
19 benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene, shall be referred to herein as the “Listed  
20 Chemicals.” Plaintiff alleges that consumption of Legoland’s flame-broiled hamburgers would  
21 thereby expose consumers of that product to the Listed Chemicals in violation of Proposition 65.

22          1.5       **Product Descriptions.** The products that are covered by this Consent  
23 Judgment are defined as follows: flame-broiled hamburgers containing the Listed Chemicals,  
24 manufactured, sold and/or distributed by Settling Defendant in California. Such products  
25 collectively are referred to herein as the “Products.”

26          1.6       **Notices of Violation.** On November 19, 2007, Leeman served Settling  
27 Defendant and various public enforcement agencies with documents, entitled “60-Day Notice of  
28 Violation” (“Notice”), that provided Settling Defendant and such public enforcers with notice that

1 alleged that Settling Defendant was in violation of Health & Safety Code §25249.6 for failing to  
2 warn purchasers that certain Products that it sold expose users in California to the Listed  
3 Chemicals.

4           1.7           **Complaint.** On March 25, 2008, Leeman, in the interest of the general public  
5 in California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the  
6 Superior Court for the County of San Diego against Legoland, and Does 1 through 150, alleging  
7 violations of Health & Safety Code § 25249.6 based on the alleged exposures to the Listed  
8 Chemicals contained in the Products sold by Settling Defendant.

9           1.8           **No Admission.** Settling Defendant denies the material factual and legal  
10 allegations contained in Plaintiff’s Notice and Complaint and maintains that all products that it  
11 has sold and distributed in California, including the Products, have been and are in compliance  
12 with all laws. Nothing in this Consent Judgment shall be construed as an admission by Settling  
13 Defendant of any fact, finding, issue of law, or violation of law, nor shall compliance with this  
14 Agreement constitute or be construed as an admission by Settling Defendant of any fact, finding,  
15 conclusion, issue of law or violation of law. However, this section shall not diminish or  
16 otherwise affect the obligations, responsibilities and duties of Settling Defendant under this  
17 Consent Judgment.

18           1.9           **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the  
19 Settling Parties stipulate that this Court has jurisdiction over the Settling Parties and concerning  
20 the alleged violations at issue and personal jurisdiction over Settling Defendant as to the acts  
21 alleged, that venue is proper in the County of San Diego, and that this Court has jurisdiction to  
22 enter this Consent Judgment and to enforce the provisions thereof.

23           1.10          **Effective Date.** For purposes of this Consent Judgment, the “Effective Date”  
24 shall be June 30, 2008.

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1 (a) located at or on a counter or bar where food is purchased, on a wall  
2 either adjacent and parallel to or clearly visible to consumers standing at the counter where food  
3 is purchased; and

4 (b) located at any other place that is reasonably likely to be seen and  
5 read by customers entering the restaurant to order food; and

6 (c) located at any other place that is reasonably likely to be seen and  
7 read by Legoland's employees during the ordinary course of business; and

8 (d) not located at any of the following locations: on an entrance or exit  
9 door, on a window, on a restroom door, in a restroom, in a hallway that leads only to restrooms,  
10 or on a refuse container.

11 2.3.3 **Sign Warnings.** Warnings shall be set forth on a sign at least 10  
12 inches high by 10 inches wide, with the word "WARNING" centered three-quarters of an inch  
13 from the top of the sign in ITC Garamond bold condensed type face all in one-inch capital letters.  
14 Three-sixteenths of an inch from the base of the word "warning" shall be a line extending from  
15 left to right across the width of the sign one-sixteenth of an inch in thickness. Centered one-half  
16 inch below the line shall be the body of the warning message set forth in section 2.3.1 in ITC  
17 Garamond bold condensed type face. For the body of the warning message, left and right  
18 margins of at least one-half of an inch, and a bottom margin of at least one-half inch shall be  
19 observed. Larger signs shall bear substantially the same proportions of type size and spacing to  
20 sign dimension as the sign 10 inches high by 10 inches wide.

21 2.3.4 **Submission of Warning Materials.** Settling Defendant shall  
22 submit signs to the Plaintiff for a determination that they comply with all the provisions of section  
23 2 of this Consent Judgment. No sign shall be deemed to comply with this Consent Judgment  
24 unless it has been submitted to and approved by the Plaintiff or the Court.

25 2.3.5 **Scope.** Nothing in this Consent Judgment requires that warnings be  
26 given for Products sold to consumers outside the State of California.

27 2.3.6 **Retention of Expert Consultant.** Should Legoland opt not to  
28 install New Broilers, within 120 days of approval of this Consent Judgment, Settling Defendant

1 shall retain a consultant to advise it as to steps it can take to minimize the formation, and the  
2 depositing on its Products, of the Listed Chemicals during the flame-broiling process. Following  
3 such advisement, Settling Defendant will institute good-faith measures to implement the steps  
4 recommended by the consultant. Settling Defendant will set aside a minimum of \$20,000 for this  
5 engagement. Within six months of retention, Settling Defendant shall send a letter to plaintiff  
6 informing her of the steps taken, or still to be taken, to implement and put into practice the  
7 consultant's recommendations.

8 **3. MONETARY PAYMENTS.**

9 **Payments Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to Health &  
10 Safety Code Section 25249.7(b), Settling Defendant shall pay \$50,000 on or before the Effective  
11 Date as civil penalties. If Legoland has by that date committed to installing and has ordered New  
12 Broilers to replace all existing flame-broilers, this payment shall be reduced by 75%. This  
13 payment shall be made payable to "Hirst & Chanler LLP in Trust For Whitney R. Leeman," and  
14 shall be delivered to Plaintiff's counsel at the following address:

15 HIRST & CHANLER LLP  
16 Attn: Prop 65 Controller  
17 2560 Ninth Street  
18 Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

19 After Court approval of this Consent Judgment, this sum shall be apportioned by Plaintiff in  
20 accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of  
21 California's Office of Environmental Health Hazard Assessment and the remaining 25% of these  
22 monies retained by Plaintiff as provided by Health & Safety Code § 25249.12(d). Plaintiff shall  
23 bear all responsibility for apportioning and paying to the State of California the appropriate  
24 amounts paid in accordance with this subsection.

25 **4. REIMBURSEMENT OF FEES AND COSTS**

26 The Settling Parties attempted to, and did, reach an accord on the compensation due to  
27 Plaintiff and her counsel under the private attorney general doctrine codified at Code of Civil  
28 Procedure § 1021.5 for all work performed through the Court's approval of the Agreement.

1 Under the private attorney general doctrine codified at Code of Civil Procedure § 1021.5, Settling  
2 Defendant shall reimburse Plaintiff and her counsel for fees and costs, incurred as a result of  
3 investigating, bringing this matter to Settling Defendant's attention, litigating and negotiating a  
4 settlement in the public interest, and seeking the Court's approval of this Consent Judgment.

5 Specifically, Settling Defendant shall pay Plaintiff and her counsel \$31,000 for all  
6 attorneys' fees, expert and investigation fees, and litigation costs. The payment shall be made  
7 payable to Hirst & Chanler LLP and shall be delivered to Plaintiff's counsel on or before the  
8 Effective Date, at the following address:

9  
10 HIRST & CHANLER LLP  
11 Attn: Prop 65 Controller  
12 2560 Ninth Street  
13 Parker Plaza, Suite 214  
14 Berkeley, CA 94710-2565

15 Except as specifically provided in this Consent Judgment, Settling Defendant shall have  
16 no further obligation with regard to reimbursement of Plaintiff's attorneys' fees and costs with  
17 regard to the Products covered in this Action.

## 18 **5. RELEASE OF ALL CLAIMS**

19 **5.1 Plaintiff's Release of Settling Defendant.** In further consideration of the  
20 representations, warranties and commitments herein contained, and for the payments to be made  
21 pursuant to sections 3 and 4, Plaintiff, on behalf of herself, her past and current agents,  
22 representatives, attorneys, successors assignees, or any person or entity who may now or in the  
23 future claim through her in a derivative manner, and in the interest of the general public, hereby  
24 waives all rights to institute or participate in, directly or indirectly, any form of legal action and  
25 releases all claims, including, without limitation, all actions, causes of action, in law or in equity,  
26 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses  
27 (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature  
28 whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against  
Settling Defendant and each of its distributors, wholesalers, licensors, licensees, auctioneers,

1 retailers, dealers, customers, owners, purchasers, users, parent company, corporate affiliates,  
2 subsidiaries and their respective officers, directors, attorneys, representatives, shareholders,  
3 agents, representatives, insurers and employees (collectively, "Settling Defendant's Releasees")  
4 arising under Proposition 65 related to Settling Defendant's or Settling Defendant's Releasees'  
5 alleged failure to warn about exposures to or identification of the Listed Chemicals contained in  
6 or on the Products. It is specifically understood and agreed that the Settling Parties and the Court  
7 intend that Settling Defendant's compliance with the terms of this Consent Judgment resolves all  
8 issues and liability, now and in the future (so long as Settling Defendant and its releasees comply  
9 with the terms of the Consent Judgment) concerning Settling Defendants' compliance with the  
10 requirements of Proposition 65 as to the Listed Chemicals in or on the Products.

11           **5.2 Settling Defendant's Release of Plaintiff.** Settling Defendant waives all rights  
12 to institute any form of legal action and releases all claims against Plaintiff, or her attorneys or  
13 representatives, for any or all actions taken or statements made by Plaintiff or her attorneys or  
14 representatives, in the course of seeking enforcement of Proposition 65 in association with this  
15 Action.

16           **6. COURT APPROVAL**

17           This Consent Judgment is not effective until it is approved and entered by the Court and  
18 shall be null and void if it is not approved and entered by the Court within one year after it has  
19 been fully executed by all Settling Parties, in which event any monies that have been provided to  
20 Plaintiff or her counsel pursuant to section 3 and section 4 above shall be refunded within fifteen  
21 (15) days. In the event that this Consent Judgment is not entered within one year due to one or  
22 more of the following occurrences, this provision will be tolled as follows: if an appeal is entered  
23 from the entry of the Consent Judgment, this provision will be tolled during the pendency of the  
24 appeal; and/or if the Court takes the motion to approve the consent judgment under submission,  
25 this provision will be tolled during the period of submission.

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1       **7. SEVERABILITY**

2           If, subsequent to court approval of this Consent Judgment, any of the provisions of this  
3 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
4 provisions remaining shall not be adversely affected.

5       **8. ATTORNEYS' FEES**

6           In the event that a dispute arises with respect to any provision(s) of this Consent  
7 Judgment, the prevailing Party shall, except as otherwise provided herein, be entitled to recover  
8 reasonable and necessary costs and reasonable attorneys' fees incurred from the resolution of  
9 such dispute, with the exception that if Settling Defendant brings a motion to modify the Consent  
10 Judgment, Settling Defendant will not be entitled to recover any costs or attorneys' fees incurred  
11 in connection with that motion.

12       **9. GOVERNING LAW**

13           The terms of this Consent Judgment shall be governed by the laws of the State of  
14 California and apply within the State of California. In the event that Proposition 65 is repealed or  
15 is otherwise rendered inapplicable by reason of law generally, or as to the Products or Listed  
16 Chemicals specifically, then Settling Defendant shall have no further obligations pursuant to this  
17 Consent Judgment with respect to, and to the extent that, those Products are so affected.

18       **10. NOTICES**

19           All correspondence and notices required to be provided pursuant to this Consent Judgment  
20 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,  
21 return receipt requested or (ii) overnight courier on either Party by the other at the addresses listed  
22 below. Either Party, from time to time, may specify a change of address to which all notices and  
23 other communications shall be sent.

24  
25           For Plaintiff:  
26           Whitney R. Leeman  
27           c/o Hirst & Chanler LLP  
28           2560 Ninth Street  
              Parker Plaza, Suite 214  
              Berkeley, CA 94710-2565

              For Settling Defendant:  
              Legoland California, LLC  
              c/o Lawrence Campitiello  
              McColloch & Campitiello LLP  
              5900 La Place Court #100  
              Carlsbad, CA 92008

1 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

6 Plaintiff agrees to comply with the reporting form requirements referenced in Health &  
7 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall  
8 present this Consent Judgment to the California Attorney General’s Office within five (5) days  
9 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment  
10 will then be served on the Attorney General’s Office at least forty-five (45) days prior to the date  
11 a hearing is scheduled on such motion in the Superior Court for the County of San Diego unless  
12 the Court allows a shorter period of time.

13 **13. ADDITIONAL POST-EXECUTION ACTIVITIES**

14 The Settling Parties shall mutually employ their best efforts to support the entry of this  
15 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a  
16 timely manner. The Settling Parties acknowledge that, pursuant to Health & Safety Code  
17 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment.  
18 Accordingly, the Settling Parties agree to file a Joint Motion to Approve the Agreement (“Joint  
19 Motion”) within a reasonable period of time after the Execution Date (*i.e.*, not to exceed thirty  
20 (30) days unless otherwise agreed to by the Settling Parties’ counsel based on unanticipated  
21 circumstances). Plaintiff’s counsel shall prepare a declaration in support of the Joint Motion  
22 which shall, *inter alia*, set forth support for the fees and costs to be reimbursed pursuant to  
23 Section 4. Settling Defendant shall have no additional responsibility to Plaintiff pursuant to  
24 C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with  
25 respect to the preparation and filing of the Joint Motion and its supporting declaration or with  
26 regard to Plaintiff’s counsel appearing for a hearing or related proceedings thereon.

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1 **14. MODIFICATION**

2 This Consent Judgment may be modified only by: (1) written agreement of the Settling  
3 Parties and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of  
4 any Party as provided by law and upon entry of a modified Consent Judgment by the Court. The  
5 Attorney General shall be served with notice of any proposed modification to this Consent  
6 Judgment at least fifteen (15) days in advance of its consideration by the Court.

7 **15. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment on behalf of their  
9 respective Settling Parties and have read, understood and agree to all of the terms and conditions  
10 of this Consent Judgment.

11 **AGREED TO:**

**AGREED TO:**

12 Date: 6/2/08

Date: \_\_\_\_\_

14 By: *Whitney R. Leeman*  
15 PLAINTIFF, WHITNEY R. LEEMAN

By: \_\_\_\_\_  
DEFENDANT, LEGOLAND CALIFORNIA, L

16 **APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

17 Date: 6/3/08  
18 HIRST & CHANLER LLP

Date: \_\_\_\_\_  
McCOLLOCH & CAMPITIELLO LLP

19 By: *David Lavine*  
20 David Lavine  
21 Attorneys for Plaintiff  
22 WHITNEY R. LEEMAN

By: \_\_\_\_\_  
Lawrence Campitiello  
Attorneys for Defendant  
LEGOLAND CALIFORNIA, LLC

23 **IT IS SO ORDERED.**

24  
25 Date: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

1 **14. MODIFICATION**

2 This Consent Judgment may be modified only by: (1) written agreement of the Settling  
3 Parties and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of  
4 any Party as provided by law and upon entry of a modified Consent Judgment by the Court. The  
5 Attorney General shall be served with notice of any proposed modification to this Consent  
6 Judgment at least fifteen (15) days in advance of its consideration by the Court.

7 **15. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment on behalf of their  
9 respective Settling Parties and have read, understood and agree to all of the terms and conditions  
10 of this Consent Judgment.

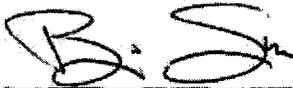
11 **AGREED TO:**

**AGREED TO:**

12 Date: \_\_\_\_\_

Date: 5/29/08

13 By: \_\_\_\_\_  
14 **PLAINTIFF, WHITNEY R. LEEMAN**

By:   
15 **DEFENDANT, LEGOLAND CALIFORNIA, L**

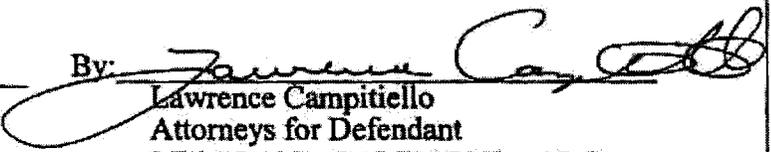
16 **APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

17 Date: \_\_\_\_\_  
18 **HIRST & CHANLER LLP**

Date: 6-3-08  
**McCOLLOCH & CAMPITIELLO LLP**

19 By: \_\_\_\_\_  
20 **David Lavine**  
21 **Attorneys for Plaintiff**  
22 **WHITNEY R. LEEMAN**

By:   
23 **Lawrence Campitiello**  
24 **Attorneys for Defendant**  
25 **LEGOLAND CALIFORNIA, LLC**

26 **IT IS SO ORDERED.**

27 Date: \_\_\_\_\_

28 \_\_\_\_\_  
**JUDGE OF THE SUPERIOR COURT**