

SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is entered into by and between Whitney R. Leeman, Ph.D. (hereinafter “Leeman”) and Barney’s Restaurant (hereinafter “Barney’s”), with Leeman and Barney’s collectively referred to as the “Parties,” and is made with reference to the following:

RECITALS

- A. Leeman.** Leeman is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer and industrial products.
- B. Barney’s.** Barney’s consists of multiple corporations employing more than 10 persons across multiple locations owned and operated in California. Barney’s manufactures, distributes and/or sells products, as defined herein, in the State of California, and has done so in the past.
- C. General Allegations.** Leeman alleges that Barney’s has manufactured, distributed and/or sold in the State of California certain flame-broiled hamburgers including, but not limited to, the Big Barney’s Burger, containing benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene, which are cancer-causing chemicals listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1996, California Health & Safety Code § 25249.5 *et seq.*, also known as Proposition 65. Benz[a]anthracene, bertzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene shall be referred to as the “Listed Chemicals.” Leeman alleges that consumption of these flame-broiled hamburgers would thereby expose consumers of these products to the Listed Chemicals in violation of Proposition 65.
- D. Product Descriptions.** The products that are covered by this Agreement are defined as follows: flame-broiled hamburgers containing the Listed Chemicals, manufactured, sold

and/or distributed by Barney's in California. Such products collectively are referred to herein as the "Products."

E. Notice of Violation. On March 24, 2008, Leeman served Barney's and various public enforcement agencies with documents, entitled "60-Day Notice of Violation" ("Notice"), that provided Barney's and such public enforcers with notice that alleged that Barney's was in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain Products that it sold expose users in California to the Listed Chemicals. To the best of the parties' knowledge, no public enforcer has diligently prosecuted the allegations set forth in the Notice.

AGREEMENT

Now, therefore, for valuable consideration and in consideration of the mutual promises set forth in this Agreement, Leeman and Barney's agree as follows:

- 1. Preliminary Statement.** This Agreement applies to all restaurants owned and operated in California by Barney's or any subsidiary, licensee or successor, now or in the future. After the Effective Date, any Products containing the Listed Chemicals shall not be sold in any such restaurants unless such Products are sold in compliance with Sections 4 and 5.
- 2. Effective Date.** For purposes of this Agreement, the "Effective Date" shall be September 30, 2008.
- 3. No Admission.** Barney's denies the material factual and legal allegations contained in the Notice, and maintains that all products that it has sold and distributed in California, including the Products, have been and are in compliance with all laws. Nothing in this Agreement shall be construed as an admission by Barney's of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Barney's of any fact, finding, conclusion, issue of law or violation of law. However, this action shall not

diminish or otherwise affect the obligations, responsibilities and duties of Barney's under this Agreement.

4. Warnings. Any warning issued for Products pursuant to this section shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices so as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use.

(a) Warning Message. Barney's represents and warrants that it will post warnings in its restaurants covered by this Agreement that satisfy and comply with the provisions of Section 4 and this Section 5 of this Agreement.

The warning message provided under any of the permitted warning methods in Section 4(b) shall conform to the following:

WARNING

Flame-cooked burgers sold or served here contain chemicals known as PAHs, which are known to the State of California to cause cancer.

(b) Warning Method.

A warning shall be provided in the restaurant through the posting of a sign that meets or substantially complies with the criteria set forth below.

A warning shall be set forth on a sign at least 5-1/2 inches high by 8-1/2 inches wide, with the word "WARNING" centered one-half inch from the top of the sign in ITC Garamond bold condensed type face or a similar font in all capital letters of five-sixths of an inch in size. Three-sixteenths of an inch from the base of the words "warning" shall be a line extending from the left to right across the width of the sign at least one-sixteenth of an inch in thickness. Centered one-half inch below the line shall be the body of the warning message set forth in Section 4(a) in ITC Garamond bold condensed type face or a similar font. For the body of the warning message, the left and right margins of at least seven-sixteenths of an inch, and a bottom margin of at least one-half inch shall be

observed. Larger signs shall bear substantially the same proportions of type size and spacing to sign dimension as the sign 5-1/2 inches high by 8-1/2 inches wide.

At least one sign must be placed in each Barney's restaurant as follows:

- (1) located on a wall in the foyer area next to a door that leads into the restaurant such that the top of the warning is between 48 and 72 inches from the ground; and
- (2) located at any other place that is reasonably likely to be seen and read by customers and employees entering the restaurant to order food and by Barney's employees during the ordinary course of business; and
- (3) not located at any of the following locations: on an entrance or exit door, on a window, on a restroom door, in a restroom, in a hallway that leads only to restrooms, or on a refuse container.

(c) Timing. Leeman acknowledges that warnings were posted voluntarily before the execution of this Agreement, but following and as a result of the Notice issued to Barney's. The warnings required by this Section shall remain posted indefinitely as of the Effective Date, except as may be required or allowed by law.

5. Compliance Review. Beginning on the Effective Date and continuing for one year thereafter, Barney's shall perform a compliance review of its restaurants at least twice during the year to determine whether it is in compliance with all of the requirements of Section 4 of this Agreement. A compliance review shall be documented and shall note, on a per restaurant basis, at a minimum: any deficiencies regarding compliance with Section 4, the date those deficiencies were discovered, and the date by which the deficiencies were corrected. All documentation regarding this compliance review shall be retained by Barney's for at least one year. Barney's shall be deemed to be in compliance with Section 4 if it

corrects any deficiencies noted during the review, or otherwise brought to its attention by any person at any time, within thirty (30) days of such notice.

6. Monetary Payments.

(a) Payments Pursuant to Health & Safety Code § 25249.7(b). Pursuant to Health & Safety Code Section 25249.7(b), Barney's shall pay a total of \$25,000 over four installments, as follows: \$6,250 to be delivered no later than September 30, 2008; \$6,250 to be delivered no later than December 31, 2008; \$6,250 to be delivered no later than March 31, 2009; and \$6,250 to be delivered no later than June 30, 2009. Payments shall be made payable to "Hirst & Chanler LLP in Trust For Whitney R. Leeman," and shall be delivered to Leeman's counsel at the following address:

HIRST & CHANLER LLP
Attn: Prop 65 Controller
455 Capitol Mall, Suite 605
Sacramento, CA 95814

The payments shall be apportioned by Leeman in accordance with Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these monies retained by Leeman as provided by Health & Safety Code § 25249.12(d). Leeman shall bear all responsibility for apportioning and paying to the State of California the appropriate amounts paid in accordance with this section.

(b) The parties have agreed on the reasonable attorneys' fees and costs to be paid Leeman pursuant to Health & Safety Code §§ 25249.7(f)(4)(B), and 25249.7(j). Specifically, Barney's shall pay Leeman and her counsel a total of \$25,000, over four installments, as follows: \$6,250 to be delivered no later than September 30, 2008; \$6,250 to be delivered no later than December 31, 2008; \$6,250 to be delivered no later than March 31, 2009; and \$6,250 to be delivered no later than

June 30, 2009. The payments shall be made payable to Hirst & Chanler LLP and delivered to the address above.

(c) Except as specifically provided in this Agreement, Barney's shall have no further obligation with regard to the payment of statutory penalties, the reimbursement of Leeman's attorneys' fees and costs or any other available monetary or equitable relief with regard to the Products covered in this action.

7. Release of all Claims.

(a) Leeman's Release. In further consideration of the representations, warranties and commitments, monetary and otherwise herein contained, Leeman, on behalf of herself, her past and current agents, representatives, attorneys, successors, assignees, or any person or entity who may now or in the future claim through her in a derivative manner, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, causes of action, in law or equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent, against Barney's and each of its distributors, wholesalers, licensors, licensees, franchisees, auctioneers, retailers, dealers, customers, owners, purchasers, users, parent company, corporate affiliates, subsidiaries and their respective officers, directors, attorneys, representatives, shareholders, agents, representatives, insurers and employees (collectively, "Releasees") arising under Proposition 65 or based on alleged exposures to any of the Listed Chemicals in the Products at any Barney's restaurant.

It is specifically understood and agreed that the Parties intend that compliance with the terms of this Agreement resolves all issues and liability, now

and in the future, concerning a Releasee's compliance with the requirements of Proposition 65 as to the Listed Chemicals in or on the Products.

(b) Barney's Release. Barney's waives all rights to institute any form of legal action against Leeman, or her attorneys or representatives, for any or all actions taken or statements made by Leeman or her attorneys or representatives, in the course of seeking enforcement of Proposition 65 in association with this matter.

- 8. Severability.** If any of the provisions of this Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.
- 9. Governing Law.** The terms of this Agreement 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 or is otherwise rendered inapplicable by force of law, whether generally or as to the Products or Listed Chemicals specifically, then Barney's shall have no further obligations pursuant to this Agreement with respect to, and to the extent that, those Products are so affected.
- 10. Notices.** All correspondence and notices required to be provided pursuant to this Agreement shall be in writing and personally delivered or sent by: (i) first-class, registered, certified mail, return receipt requested or (ii) overnight courier on either Party by the other at the addresses listed below. Either Party, from time to time, may specify a change of address to which all notices and other communications shall be sent.

For Leeman:
Proposition 65 Coordinator
Hirst & Chanler LLP
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

For Barney's:
Barney's Restaurant
1591 Solano Avenue
Berkeley, CA 94707
Attn: Albert Sarshar

- 11. Counterparts; Facsimile Signatures.** This Agreement may be executed in counterparts and by facsimile, each of which shall be deemed an original, and all of which when taken together, shall constitute one and the same document.
- 12. Compliance with Health & Safety Code § 25249.9(f).** Leeman agrees to comply with the reporting requirements of Health & Safety Code § 25249.9(f). Pursuant to regulations promulgated under that section, Leeman shall report this Agreement to the California Attorney General's Office within five (5) days after receiving all of the necessary signatures.
- 13. Additional Post-Execution Activities.** The Parties shall work diligently and in good faith with respect to any required post-execution activities.
- 14. Modification.** This Agreement may be modified only by a written agreement of the Parties. Leeman shall serve the Attorney General with notice of any such proposed modification.
- 15. Application of Agreement.** This Agreement shall apply to, be binding upon, and inure to the benefit of the Parties hereto, their divisions, subdivisions, and subsidiaries, and the successors to, assigns of and those in privity-of-interest with, any of them.
- 16. Authorization.** The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Agreement.

AGREED TO:

Date: 11/26/08

By: 
Whitney R. Leeman, Ph.D.
Plaintiff

AGREED TO:

Date: 09-23-08

By: 
Albert Sarshar, President
Defendant, Barney's Restaurant