

1 Josh Voorhees, State Bar No. 241436
Rachel S. Doughty, State Bar No. 255904
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118

5 Attorneys for Plaintiff
6 WHITNEY R. LEEMAN, PH.D.

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA
10 UNLIMITED CIVIL JURISDICTION

11
12 WHITNEY R. LEEMAN, PH.D.,

13 Plaintiff,

14 v.

15 HILLSTONE RESTAURANT GROUP, INC.;;
16 and DOES 1-150, inclusive,

17 Defendants.

Case No. RG13665022

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Whitney R. Leeman and Hillstone Restaurant Group, Inc.**

3 This Consent Judgment is entered into by and between Whitney R. Leeman, Ph.D.
4 (“Leeman” or “Plaintiff”) and Hillstone Restaurant Group, Inc. (“Hillstone” or “Defendant”), with
5 Leeman and Hillstone collectively referred to as the “Parties,” and each individually referred to as
6 a Party.

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Hillstone employs ten or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
14 Code section 25249.6 et seq. (“Proposition 65”).

15 **1.4 General Allegations**

16 Leeman alleges that Hillstone has sold in the State of California, without the requisite
17 Proposition 65 warning, flame cooked ground beef products containing benz[a]anthracene,
18 benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene, which
19 are cancer-causing chemicals listed pursuant to Proposition 65. Benz[a]anthracene,
20 benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene shall be
21 collectively referred to herein as the “Listed Chemicals” or “PAHs.”

22 **1.5 Product Description**

23 The products covered by this Consent Judgment are flame cooked ground beef products,
24 including, but not limited to, the *Cheeseburger*, containing the Listed Chemicals, and which are
25 sold or offered for sale in California by Hillstone (collectively “Products”).
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1.6 Notice of Violation

On or about August 16, 2012, Leeman served Hillstone and various public prosecutors with a “60-Day Notice of Violation” (“Notice”), alleging that Hillstone was in violation of Proposition 65 for failing to warn its customers and consumers that the Products expose consumers to the Listed Chemicals. To the best of the Parties’ knowledge, no public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.7 Complaint

On January 28, 2013, Leeman filed a complaint in Alameda County Superior Court against Hillstone and Does 1 through 150 (the “Complaint” or “Action”), alleging violations of Proposition 65, based on the alleged exposures to the Listed Chemicals contained in the Products sold by Hillstone to consumers in California.

1.8 No Admission

Hillstone denies the material factual and legal allegations contained in the Notice and maintains that all of the products it has sold 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 Hillstone 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 Hillstone of any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically denied Hillstone. This Section shall not, however, diminish or otherwise affect Hillstone’s obligations, responsibilities, and duties under this Consent Judgment.

1.9 Consent to Jurisdiction

For purposes of this Consent Judgment only, the Parties stipulate that this Court has jurisdiction over Hillstone as to the allegations contained in the Complaint, that venue is proper in Alameda County, and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment, pursuant to California Code of Civil Procedure § 664.6, as a full and binding resolution of all claims that were or could have been raised in the Complaint against Hillstone based on the facts alleged therein and in the Notice.

1 **1.10 Effective Date; Entry Date**

2 For purposes of this Consent Judgment, the term “Effective Date” shall mean 30 days after
3 this Consent Judgment is fully executed by the Parties, and the term “Entry Date” is the date upon
4 which the Court approves and enters this Consent Judgment.

5 **2. INJUNCTIVE RELIEF**

6 **2.1 Reformulation: Cooking Modification & Certification**

7 By no later than thirty (30) days after the Entry Date (the 30th day after the Entry Date is
8 referred to herein as the “Compliance Deadline”), Hillstone shall not sell or offer for sale in
9 California any ground beef menu items that are flame grilled or flame broiled with direct
10 exposure to an open flame. To that end, Hillstone shall complete installation of cooking
11 equipment at each location in California where Hillstone prepares or cooks Products, as necessary
12 to ensure compliance with this Section by the Compliance Deadline.¹

13 Hillstone shall certify, in writing, within five (5) business days after the Compliance
14 Deadline, that the new cooking equipment has been installed by the Compliance Deadline at each
15 of Hillstone’s California locations serving Products.

16 All documentation regarding modifications made to Hillstone’s cooking equipment in
17 accordance with this Section 2.1 shall be retained by Hillstone for at least three (3) years, and
18 shall be promptly shared with Leeman, upon Leeman’s written request. Except as provided
19 below in this Section 2.1, Leeman and her counsel shall keep such documentation confidential. In
20 the event that a dispute arises with respect to compliance with the terms of this Consent Judgment
21 with respect to such cooking equipment changes, the Parties shall employ good faith efforts to
22 seek entry of a protective order that governs access to and disclosure of the information provided

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24 ¹ During settlement discussions, the Parties exchanged certain information. As part of those
25 discussions, Hillstone represented that it had performed testing on ground beef items equivalent to
26 the Products, including the exemplar, prepared to well done on cooking equipment that does not
27 expose food to open flame (in use at one of its restaurants since prior to the date of the Notice),
and that none of the Listed Chemicals were found when these items were tested to a 0.1 part per
billion detection limit.

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1 confidentially by Hillstone to Leeman, before Leeman attempts to disclose such information in
2 connection with that litigation or proceeding.

3 **3. MONETARY TERMS**

4 **3.1 Civil Penalties**

5 In settlement of all the claims referred to in this Consent Judgment, Hillstone shall pay a
6 total of up to \$97,000 in civil penalties in accordance with this Section. Each penalty payment
7 will be allocated in accordance with Health and Safety Code section 25249.12(c)(1) and (d), with
8 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment
9 (“OEHHA”), in the form of a check issued to “OEHHA,” and the remaining 25% of the penalty
10 remitted to Leeman, in the form of a check made payable to “The Chanler Group in Trust for
11 Whitney R. Leeman.”

12 **3.1.1 Initial Civil Penalty**

13 Hillstone shall pay an initial civil penalty in the amount of \$12,000. The portion due to
14 Leeman, \$3,000, shall be delivered within ten days of the Effective Date. The portion due to
15 OEHHA, \$9,000, shall be delivered within ten days of the Entry Date.

16 **3.1.2 Final Civil Penalty**

17 Hillstone shall pay a final civil penalty of \$85,000 within ten business days of the
18 certification deadline set out in Section 2.1. The final civil penalty shall be waived in its entirety
19 if Hillstone has provided the certification as set forth in Section 2.1 on or before five business
20 days after the Compliance Deadline. The certification in lieu of a portion of the final civil penalty
21 payment provided by this Section is a material term, and time is of the essence.

22 **3.2 Reimbursement of Leeman’s Fees and Costs**

23 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute
24 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
25 this fee issue to be resolved after the material terms of the agreement had been settled. Leeman
26 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
27 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
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1 to Leeman and her counsel under general contract principles and the private attorney general
2 doctrine, codified at Code of Civil Procedure section 1021.5, for all work performed through the
3 mutual execution of this agreement. Hillstone shall pay \$37,500 on or before the Effective Date
4 for fees and costs incurred as a result of investigating, bringing this matter to Hillstone's attention,
5 and negotiating a settlement in the public interest. These funds shall remain in the trust account
6 of The Chanler Group until the Entry Date.

7 **3.3 Payment Procedures**

8 **3.3.1 Issuance of Payments**

9 All payments owed to Leeman, pursuant to Sections 3.1 and 3.2, shall be delivered to the
10 following address:

11 The Chanler Group
12 Attn: Proposition 65 Controller
13 2560 Ninth Street
14 Parker Plaza, Suite 214
15 Berkeley, CA 94710

16 All payments owed to OEHHHA pursuant to Section 3.1, shall be delivered to OEHHHA
17 (Memo line "Prop 65 Penalties") at one of the following addresses, as appropriate:

18 For United States Postal Service Delivery:

19 Mike Gyrics
20 Fiscal Operations Branch Chief
21 Office of Environmental Health Hazard Assessment
22 P.O. Box 4010
23 Sacramento, CA 95812-4010

24 For Non-United States Postal Service Delivery:

25 Mike Gyrics
26 Fiscal Operations Branch Chief
27 Office of Environmental Health Hazard Assessment
28 1001 I Street
Sacramento, CA 95814:

3.3.2 Proof of Payment

A copy of each check payable to OEHHHA shall be mailed, simultaneous with payment, to
The Chanler Group at the address set forth above in Section 3.3.1, as proof of payment to
OEHHHA.

1 **3.3.3 Tax Documentation**

2 Upon making each payment required by this Sections 3.1 and 3.2, Hillstone shall issue
3 separate 1099 forms as follows: For each penalty payment to OEHHA, a 1099 shall be issued to
4 the Office of Environmental Health Hazard Assessment, 1001 I Street, Sacramento, CA 95814
5 (EIN: 68-0284486); for each penalty payment to Whitney Leeman, a 1099 shall be issued to
6 “Whitney R. Leeman,” whose address and tax identification number shall be furnished upon
7 request after this Consent Judgment is fully executed by the Parties; for each payment in
8 reimbursement of fees and costs, Hillstone shall issue a separate 1099 form to “The Chanler
9 Group” (EIN: 94-3171522).

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Plaintiff’s Public Release of Proposition 65 Claims**

12 Leeman on behalf of herself, her past and current agents, representatives, attorneys,
13 successors, and/or assignees, and acting in a representative capacity in the public interest, hereby
14 waives all rights to institute or participate in, directly or indirectly, any form of legal action, and
15 discharges and releases (a) Hillstone and its parent, subsidiaries, affiliates, and divisions; (b) the
16 past, present and future operators, owners, managers, licensors, licensees, joint venturers, and
17 partners of each of the locations in California where Hillstone sells or offers for sale any
18 Products; (c) each of the distributors, wholesalers, retailers, users, packagers, retail customers and
19 all other entities in the chain of distribution down to the consumer of any Product of the persons
20 and entities described in (a) and (b) above; (d) each of the respective officers, directors,
21 shareholders, employees, agents, predecessors, successors and assigns of the persons and entities
22 described in (a) through (c) above (the persons and entities identified in (a), (b), (c), and (d) above
23 are collectively referred to as the “Released Parties”), from any and all claims, actions, causes of
24 action, suits, demands, liabilities, damages, penalties, fees (including but not limited to
25 investigation fees, attorney’s fees and expert fees), costs and expenses (collectively, “Claims”) as
26 to any alleged violation of Proposition 65 based on or arising from any alleged exposure to any of
27 the Listed Chemicals concerning the Products sold before the Compliance Deadline.

1 This Consent Judgment is a full, final, and binding resolution as to the Claims released in
2 this Paragraph 4.1. Leeman further acknowledges that compliance with the terms of Section 2 of
3 this Consent Judgment shall constitute compliance with Proposition 65 with respect to Listed
4 Chemicals regarding the Products as set forth in the Notice and the Complaint.

5 **4.2 Plaintiff's Individual Release of Claims**

6 Plaintiff also, in her individual capacity only and *not* in her representative capacity,
7 provides a release herein which shall be effective as a full and final accord and satisfaction, as a
8 bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses,
9 claims, liabilities and demands of plaintiff of any nature, character or kind, whether known or
10 unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to
11 the Listed Chemicals in the Products sold before the Compliance Deadline.

12 **4.3 Defendant's Release of Plaintiff**

13 Defendant, on behalf of itself, its past and current agents, representatives, attorneys,
14 successors, and/or assignees, hereby waives any and all claims against Plaintiff, and her attorneys
15 and other representatives, for any and all actions taken or statements made (or those that could
16 have been taken or made) by Plaintiff and her attorneys and other representatives, whether in the
17 course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
18 matter with respect to the Products.

19 **4.4 Reservation of Rights**

20 Nothing in Section 4 limits or affects any Party's right to seek to enforce the terms of this
21 Consent Judgment.

22 **5. COURT APPROVAL**

23 This Consent Judgment is not effective until it is approved and entered by the Court and
24 shall be null and void if, for any reason, it is not approved and entered by the Court within one
25 year after it has been fully executed by the Parties, in which event any monies that have been paid
26 to Leeman or her counsel pursuant to Section 3 above shall be refunded within fifteen (15) days
27 after Leeman's receipt of written notice from Hillstone that the one-year period has expired.

1 **6. SEVERABILITY**

2 If, subsequent to the execution 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 **7. GOVERNING LAW**

6 The terms of this Consent Judgment shall be governed by the laws of the State of
7 California.

8 **8. NOTICES**

9 Unless specified herein, all correspondence and notices required to be provided pursuant
10 to this Consent Judgment shall be in writing and sent by (i) personal delivery, (ii) first-class,
11 registered or certified mail, return receipt requested, or (iii) overnight courier on any Party by the
12 other Party at the following addresses:

13 For Hillstone:

14 W. Glenn Viers, Esq.
15 Vice President & General Counsel
16 Hillstone Restaurant Group, Inc.
3539 Northside Parkway
Atlanta, GA 30327

17 With a copy to:

18 Sarah Esmaili, Esq.
19 Arnold & Porter LLP
Three Embarcadero Center, 7th Floor
20 San Francisco, CA 94111

21 Attorneys for Hillstone Restaurant Group, Inc.

22 For Leeman:

23 Proposition 65 Coordinator
24 The Chanler Group
25 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

26 Attorneys for Dr. Whitney R. Leeman
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1 Any Party, from time to time, may specify in writing to the other Party a change of
2 address to which all notices and other communications shall be sent.

3 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

7 **10. POST EXECUTION ACTIVITIES**

8 Leeman agrees to comply with the reporting form requirements referenced in Health and
9 Safety Code section 25249.7(f). In addition, the Parties acknowledge that, pursuant to Health and
10 Safety Code section 25249.7, a noticed motion is required to obtain judicial approval of this
11 Consent Judgment. Leeman shall prepare and file such motion to approve this Consent Judgment,
12 and Hillstone shall not oppose such motion. In furtherance of obtaining such approval, Leeman
13 and Hillstone and their respective counsel agree to mutually employ their best efforts to support
14 the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment
15 by the Court in a timely manner.

16 **11. MODIFICATION**

17 This Consent Judgment may be modified only by written agreement of the Parties.
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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.

6 **AGREED TO:**

AGREED TO:

8
9 By: Whitney Leeman
10 WHITNEY R. LEEMAN, PH.D.

By: _____
W. Glenn Viers
Vice President and General Counsel
HILLSTONE RESTAURANT GROUP, INC.

11
12 Date: 5/16/13

Date: _____

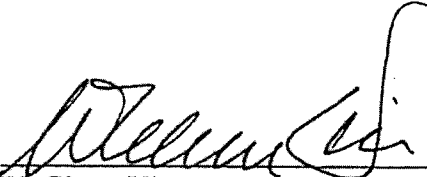
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3 respective Parties, and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

6 **AGREED TO:**

AGREED TO:

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

By:  _____
11 W. Glenn Viers
12 Vice President and General Counsel
13 HILLSTONE RESTAURANT GROUP, INC.

14 Date: _____

Date: May 17, 2013

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