

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 SANTA CLARA
10 UNLIMITED CIVIL JURISDICTION

11 WHITNEY R. LEEMAN, PH.D.,

12 Plaintiff,

13 v.

14
15 CRAFTWORKS RESTAURANTS &
16 BREWERIES, INC., GORDON BIRSCH
BREWERY RESTAURANT GROUP, INC.;;
and DOES 1-150, inclusive,

17 Defendants.

Case No. 113cv245141

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Proposed Consent Judgment (“Consent Judgment”) is entered into by and between
4 Whitney R. Leeman, Ph.D. (“Leeman”) on the one hand, and Craftworks Restaurants &
5 Breweries, Inc. (“Craftworks”) and Gordon Biersch Brewery Restaurant Group, Inc. (“Gordon
6 Biersch”) on the other hand, with Leeman, Craftworks, and Gordon Biersch collectively referred
7 to as the “Parties.” 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 products. Craftworks and Gordon Biersch each
10 employs ten or more persons and is a person in the course of doing business for purposes of the
11 Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code section
12 25249.6 *et seq.* (“Proposition 65”).

13 **1.2 General Allegations**

14 Leeman alleges that Craftworks and Gordon Biersch have sold in the State of California,
15 without the requisite Proposition 65 health hazard warning, flame cooked ground beef products
16 containing benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and
17 indeno[1,2,3-cd]pyrene, which are cancer-causing chemicals listed pursuant to Proposition 65.
18 Benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and
19 indeno[1,2,3-cd]pyrene shall be collectively referred to hereinafter as the “Listed Chemicals.”

20 **1.3 Product Description**

21 The products covered by this Consent Judgment are limited to flame cooked ground beef
22 products, including the *Gordon Biersch Cheeseburger*, sold or offered for sale in California at
23 restaurants owned and operated by Craftworks and/or Gordon Biersch and operating under the
24 name “Gordon Biersch Brewery Restaurant” (“Products”). The definition of Products does not
25 include flame cooked ground beef products sold by any franchisee of Craftworks or Gordon
26 Biersch (“Franchisee”), regardless of what name any such entity is operating under.

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1 **1.4 Notice of Violation**

2 On or about August 16, 2012, Leeman served Craftworks, Gordon Biersch, and various
3 public enforcement agencies with a “60-Day Notice of Violation” (“Notice”). The Notice alleged
4 that Craftworks and Gordon Biersch were in violation of Proposition 65 for failing to warn their
5 customers, consumers, and employees in California that certain flame cooked ground beef
6 products containing the Listed Chemicals sold by Craftworks and Gordon Biersch in California
7 exposed consumers to the Listed Chemicals. To the best of the Parties’ knowledge, no public
8 enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

9 **1.5 Complaint**

10 On April 22, 2013, Leeman filed a complaint against Craftworks and Gordon Biersch in
11 the above-captioned action (the “Complaint” or “Action”), alleging violations of Proposition 65,
12 based on the alleged exposures to the Listed Chemicals contained in the Products.

13 **1.6 No Admission**

14 Craftworks and Gordon Biersch deny the material factual and legal allegations contained
15 in the Notice and the Complaint and maintain that all of the products they have sold in California,
16 including the Products, have been, and are, in compliance with all laws. Nothing in this Consent
17 Judgment shall be construed as an admission by Craftworks or Gordon Biersch of any fact,
18 finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this
19 Consent Judgment constitute or be construed as an admission by Craftworks or Gordon Biersch of
20 any fact, finding, conclusion of law, issue of law, or violation of law, such being specifically
21 denied by Craftworks and Gordon Biersch. This Section shall not, however, diminish or otherwise
22 affect Craftworks’ and Gordon Biersch’s obligations, responsibilities, and duties under this
23 Consent Judgment.

24 **1.7 Effective Date**

25 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date on
26 which this Consent Judgment is fully executed by all Parties.

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1 **2. INJUNCTIVE RELIEF**

2 **2.1 Warning Language and Method**

3 Commencing within thirty days of the Effective Date and continuing thereafter,
4 Craftworks shall, for its restaurants in California selling or offering for sale any Products, provide
5 a “Warning” as set forth in this Section. The Warning shall be prominently placed with such
6 conspicuousness as compared with other words, statements, designs, or devices so as to render it
7 likely to be read and understood by an ordinary individual under customary conditions before
8 purchase or consumption. Specifically, the Warning shall be provided through the posting of a
9 sign that meets or substantially complies with the criteria set forth below.

10 The Warning will be displayed on a sign (“Warning Sign”) that is at least ten inches by ten
11 inches (10 x 10), with the word “WARNING” centered three-quarters of an inch from the top of
12 the sign in Times New Roman bold type face, Garamond bold type face, or similar font, in all
13 capital letters that are at least one-inch in height. Three sixteenths of an inch from the base of the
14 word “WARNING” shall be a line extending from left to right across the width of the sign one
15 sixteenth of an inch in thickness. Centered one half inch below the line shall be the body of the
16 warning message. The Warning shall appear in Times New Roman bold type face, Garamond
17 bold type face, or a similar font. For the body of the Warning, left and right margins of at least
18 one-half of an inch, and a bottom margin of at least one-half inch shall be observed. Larger signs
19 shall bear substantially the same proportions of type size and spacing relative to the sign’s
20 dimensions as the sign 10 inches high by 10 inches wide.

21 A Warning Sign must be placed at each of the following locations in the restaurant so that
22 it is clearly visible to consumers: (1) at the hostess station or, if there is no hostess station, at any
23 other place where the sign is reasonably likely to be seen and read by customers entering into the
24 restaurant area; (2) at each counter where food is purchased; and (3) in the bar area next to the
25 posted business licenses.

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1 The language of the Warning shall state as follows¹:

2 **WARNING:** Chemicals known to the State of California to cause cancer[, or
3 birth defects or other reproductive harm] may be present in the
4 food or beverages sold here. For example, many grilled foods,
such as flame-cooked beef, contain polycyclic aromatic
hydrocarbons (PAHs) which are formed as a byproduct of grilling.

5 **2.2 Compliance Review**

6 Beginning on the date that is thirty days following the Effective Date and continuing at
7 least once every year for five years thereafter, Craftworks shall perform a compliance review, as
8 to each location in California selling any Products, to assess and ensure that each location is in
9 compliance with all of the requirements of Section 2.1. The compliance review shall be
10 documented in writing, noting with specificity at a minimum: any deficiencies regarding
11 compliance with this Section, the date those deficiencies were discovered, and the date by which
12 the deficiencies were corrected. All documentation regarding this compliance review shall be
13 retained by Craftworks for at least two years from the date produced, and shall be promptly
14 shared with Leeman, upon Leeman's written request. Craftworks shall ensure, within fourteen
15 (14) days of the compliance inspection or notification of noncompliance by any other means,
16 correction of any deficiencies, including replacing damaged or missing Warning Signs.

17 **2.3 Scope of Injunctive Requirements**

18 Nothing in this Consent Judgment requires Craftworks or Gordon Biersch to ensure
19 compliance by franchisees with the requirements of Sections 2.1 and 2.2.

20 **3. MONETARY PAYMENTS**

21 **3.1 Civil Penalties**

22 In settlement of all the claims referred to in this Consent Judgment, Craftworks shall pay
23 \$57,000 in civil penalties in accordance with this Section. Payment will be allocated in

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25 ¹ Language appearing in brackets is optional. Craftworks may add the bracketed language appearing
26 in the Warning, and language regarding additional chemicals and/or products, only if Craftworks has
27 knowledge—either based on testing conducted by a U.S.-based laboratory employing methods for
28 detection and analysis of chemicals authorized by state or federal agencies, or ground in facts that are
generally accepted by relevant regulatory agencies—that chemicals known to the State of California
to cause cancer, birth defects, or other reproductive harm are contained in food products it sells,
offers for sale, or distributes in California.

1 accordance with Health and Safety Code section 25249.12(c)(1) and (d), with 75% of the funds
2 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”), in the
3 form of a check issued to “OEHHA,” and the remaining 25% of the penalty remitted to Leeman,
4 in the form of a check made payable to “The Chanler Group in Trust for Whitney R. Leeman.”
5 Penalty payment shall be delivered to the addresses listed in Section 3.3 below.

6 **3.2 Reimbursement of Fees and Costs**

7 The Parties acknowledge that Leeman and her counsel offered to resolve this dispute
8 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
9 this fee issue to be resolved after the material terms of the agreement had been settled.

10 Craftworks then expressed a desire to resolve the fee and cost issue shortly after the other
11 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
12 the compensation due to Leeman and her counsel under general contract principles and the private
13 attorney general doctrine codified at Code of Civil Procedure section 1021.5, for all work
14 performed in this matter. Under these legal principles, within forty-five (45) days of the Effective
15 Date, Craftworks shall pay \$38,000 for all fees and costs incurred investigating, bringing this
16 matter to their attention, and negotiating a settlement in the public interest. These funds shall
17 remain in the trust account of The Chanler Group until the date that the Consent Judgment is
18 approved and entered by the Court (the “Entry Date”). Craftworks shall provide its payment in
19 the form of a check payable to “The Chanler Group,” issue a separate 1099 for fees and costs
20 (EIN: 94-3171522), and deliver payment at the address provided in Section 3.3.1(a).

21 **3.3 Payment Procedures**

22 **3.3.1 Issuance of Payments**

23 All payments owed to Leeman, pursuant to Sections 3.1 and 3.2, shall be delivered to the
24 following address within forty-five (45) days of the Effective Date, with such funds remaining in
25 the trust account of The Chanler Group until the Entry Date:

26 The Chanler Group
27 Attn: Proposition 65 Controller
28 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

1 All payments owed to OEHHA pursuant to Sections 3.1, shall be delivered directly to
2 OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses, as appropriate,
3 within 15 days of the Entry Date:

4 For United States Postal Service Delivery:

5 Mike Gyrics
6 Fiscal Operations Branch Chief
7 Office of Environmental Health Hazard Assessment
8 P.O. Box 4010
9 Sacramento, CA 95812-4010

10 For Non-United States Postal Service Delivery:

11 Mike Gyrics
12 Fiscal Operations Branch Chief
13 Office of Environmental Health Hazard Assessment
14 1001 I Street
15 Sacramento, CA 95814

16 **3.3.2 Proof of Payment**

17 A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to
18 The Chanler Group at the address set forth above in Section 3.3.1(a), as proof of payment to
19 OEHHA.
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21 **3.3.3 Tax Documentation**

22 Upon each payment required by this Section 3, Craftworks shall issue separate 1099 forms
23 as follows: For each penalty payment to OEHHA, a 1099 shall be issued to the Office of
24 Environmental Health Hazard Assessment, 1001 I Street, Sacramento, CA 95814 (EIN: 68-
25 0284486); for each penalty payment to Whitney Leeman, a 1099 shall be issued to "Whitney R.
26 Leeman," whose address and tax identification number shall be furnished upon request after this
27 Consent Judgment is fully executed by the Parties; and for each payment in reimbursement of fees
28 and costs, Craftworks shall issue a 1099 form to "The Chanler Group" (EIN: 94-3171522). Upon
the execution of the Consent Judgment by both parties, Leeman shall provide W9 forms to
Craftworks for all of the payees specified in Section 3.

1 **4. RELEASES**

2 **4.1 Leeman's Release of Craftworks and Gordon Biersch**

3 Leeman on behalf of herself, her past and current agents, representatives, attorneys,
4 successors, and/or assignees, and acting in a representative capacity in the public interest, hereby
5 waives all rights to institute or participate in, directly or indirectly, any form of legal action, and
6 discharges and releases (a) Craftworks and Gordon Biersch and their parents, subsidiaries, and
7 divisions; (b) their past, present and future operators, owners, managers, joint venturers, Product
8 customers, or partners, and (c) each of the respective officers, directors, shareholders, employees,
9 agents, predecessors, successors, and assigns of the persons and entities described in (a) and (b)
10 above, from any and all claims, actions, causes of action, suits, demands, liabilities, damages,
11 penalties, fees (including but not limited to investigation fees, attorneys' fees and expert fees),
12 costs, and expenses (collectively, "Claims") as to any alleged violation of Proposition 65 up
13 through the Effective Date based on or arising from any alleged exposure to any of the Listed
14 Chemicals from the Products. This Consent Judgment is a full, final, and binding resolution as to
15 the Claims released in this Section 4.1 and the Claims asserted in the Notice and Complaint as to
16 the Products. Leeman further acknowledges that compliance with the terms of Section 2 of this
17 Consent Judgment shall constitute compliance with Proposition 65 with respect to Listed
18 Chemicals regarding the Products.

19 Nothing in this Consent Judgment is intended to provide any release from liability for
20 franchisees of Craftworks or Gordon Biersch generally, or, more specifically, for any party with
21 regard to the sale of flame-cooked ground beef at the location of any Franchisee or any other
22 restaurant other than restaurants owned and operated by Craftworks and/or Gordon Biersch and
23 operating under the name "Gordon Biersch Brewery Restaurant."

24 **4.2 Craftworks and Gordon Biersch's Release of Leeman**

25 Craftworks and Gordon Biersch, each on its own behalf of, and on behalf of its past and
26 current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all
27 claims against Leeman and her attorneys and other representatives, for any and all actions taken
28 or statements made (or those that could have been taken or made) by Leeman and her attorneys

1 and other representatives, whether in the course of investigating claims, otherwise seeking to
2 enforce Proposition 65 against them in this matter, or with respect to the Products.

3 **4.3 Reservation of Rights**

4 Nothing in Section 4 limits or affects any Party's right to seek to enforce the terms of this
5 Consent Judgment. Dr. Leeman's release of liability included in this Consent Judgment does not
6 extend to Franchisees.

7 **5. COURT APPROVAL**

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

13 **6. SEVERABILITY**

14 If, subsequent to the execution of this Consent Judgment, any provision is held by a court
15 to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely
16 affected.

17 **7. GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of
19 California.

20 **8. NOTICES**

21 Unless specified herein, all correspondence and notices required to be provided pursuant
22 to this Consent Judgment shall be sent by: (i) personal delivery; (ii) first-class, registered or
23 certified mail, return receipt requested; or (iii) overnight courier on any party by the other party at
24 the following addresses:

25 For Craftworks and Gordon Biersch:
26 Richard Rivera, President
27 Craftworks Restaurants & Breweries, Inc.
28 201 West Main Street, Suite 301
Chattanooga, TN 37408

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

1 With a copy to:

2 Sarah Esmaili
3 Arnold & Porter LLP
4 Three Embarcadero Center, 7th Floor
5 San Francisco, CA 94111

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

8 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

12 **10. POST-EXECUTION ACTIVITIES**

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

21 **11. MODIFICATION**

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

23 **12. AUTHORIZATION**

24 The undersigned are authorized to execute this Consent Judgment on behalf of their
25 respective Parties and have read, understood and agree to all of the terms and conditions of this
26 Consent Judgment.
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AGREED TO:

AGREED TO:

By: Whitney Leeman
PLAINTIFF WHITNEY R. LEEMAN,
PH.D.

By: _____
Richard Rivera, President
DEFENDANTS CRAFTWORKS
RESTAURANTS & BREWERIES, INC.
AND GORDON BIERSCHE BREWERY
RESTAURANT GROUP, INC.

Date: 6/12/13

Date: _____

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AGREED TO:

AGREED TO:

By: _____
PLAINTIFF WHITNEY R. LEEMAN,
PH.D.

By: Richard Rivera
Richard Rivera, President
DEFENDANTS CRAFTWORKS
RESTAURANTS & BREWERIES, INC.
AND GORDON BIRSCH BREWERY
RESTAURANT GROUP, INC.

Date: _____

Date: 6/12/13