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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF ALAMEDA

11 UNLIMITED CIVIL JURISDICTION

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

14 Plaintiff,

15 v.

16 NATERRA INTERNATIONAL, INC.; *et al.*,

17 Defendants.
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Case No. RG16827817

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.5 *et seq.*; Cal.
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D.
4 (“Leeman”), and defendant Naterra International, Inc. (“Naterra”) with Leeman and Naterra each
5 individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

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

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Leeman alleges that Naterra manufactures, sells, and distributes for sale in California,
16 vinyl/PVC toiletry bags containing di(2-ethylhexyl)phthalate (“DEHP”), and that it does so without
17 first providing the health hazard warning required by Proposition 65. DEHP is listed pursuant to
18 Proposition 65 as a chemical known to cause birth defects or other reproductive harm.

19 **1.5 Product Description**

20 For purposes of this Consent Judgment, “Covered Products” are defined as vinyl/PVC toiletry
21 bags containing DEHP that are sold or distributed for sale in California by Naterra including, but not
22 limited to, the bag component of the *Tree Hut Shea Body Regimen Coconut Lime, #778027, UPC #0*
23 *75371 78027 1*.

24 **1.6 Notice of Violation**

25 On September 15, 2015, Leeman served Naterra, the California Attorney General, and other
26 requisite public enforcers with a 60-Day Notice of Violation (“Notice”). A true and correct copy of
27 the Notice is attached hereto as Exhibit A and is hereby incorporated by reference. The Notice
28 alleges that Naterra violated Proposition 65 by failing to warn its customers and consumers in

1 California of the health risks associated with exposures to DEHP from the Covered Products. No
2 public enforcer has commenced and is diligently prosecuting an action to enforce the violations
3 alleged in the Notice.

4 **1.7 Complaint**

5 On August 18, 2016, Leeman filed the instant action (“Complaint”), for the violations of
6 Proposition 65 that are the subject of the Notice.

7 **1.8 No Admission**

8 Naterra denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintains that all of the products that it has sold or distributed for sale in California,
10 including the Covered Products, have been and are in compliance with all laws. Naterra admits no
11 liability or fault of any kind and enters into this Consent Judgment in order to amicably resolve all
12 outstanding allegations. Furthermore, nothing in this Consent Judgment shall be construed as an
13 admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall
14 compliance with this Consent Judgment constitute or be construed as an admission of any fact,
15 finding, conclusion of law, issue of law, or violation of law. This Section shall not, however,
16 diminish or otherwise affect Naterra’s obligations, responsibilities, and duties under this Consent
17 Judgment.

18 **1.9 Jurisdiction**

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

23 **1.10 Effective Date**

24 For purposes of this Consent Judgment, the term “Effective Date” means the date on which
25 motion for approval of the Consent Judgment is granted by the Court.

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1 **2. INJUNCTIVE RELIEF: CONFORMING PRODUCTS**

2 Commencing on the Effective Date, and continuing thereafter, Naterra agrees to only sell or
3 distribute for sale in California “Conforming Products.” For purposes of this Consent Judgment,
4 Conforming Products are defined as Covered Products containing a maximum DEHP concentration
5 of 1,000 parts per million (0.1%) when analyzed pursuant to U.S. Environmental Protection Agency
6 testing methodologies 3580A and 8270C or equivalent methodologies used by state or federal
7 agencies to determine DEHP content in a solid substance.

8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Civil Penalty Payment**

10 The Parties agree that pursuant to Health & Safety Code § 25249.7(b), in settlement of all the
11 claims referred to in this Consent Judgment, Naterra shall pay \$2,000 in civil penalties. Naterra’s
12 civil penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1)
13 and (d), with seventy-five percent (75%) of the funds paid to the California Office of Environmental
14 Health Hazard Assessment (“OEHHA”), and twenty-five percent (25%) of the funds remitted to
15 Leeman. Naterra shall provide its payment in two checks for the following amounts made payable to:
16 (a) “OEHHA” in the amount of \$1,500; and (b) “Whitney R. Leeman, Client Trust Account” in the
17 amount of \$500. Leeman’s counsel shall be responsible for delivering the penalty payment to
18 OEHHA.

19 **3.2 Reimbursement of Attorney’s Fees and Costs**

20 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
21 reaching terms on the amount of fees and costs to be reimbursed, thereby leaving the issue to be
22 resolved after the material terms of this Consent Judgment had been settled. Shortly after the other
23 settlement terms had been finalized, the Parties negotiated a reimbursement of the compensation due
24 to Leeman and her counsel under general contract principles and the private attorney general doctrine
25 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
26 mutual execution of this Consent Judgment. Accordingly, Naterra agrees to pay \$15,000 in a check
27 payable to “The Chanler Group” for all fees and costs incurred by Leeman investigating, bringing
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1 this matter to Naterra’s attention, litigating and negotiating a settlement in the public interest, and
2 obtaining court approval of the same.

3 **3.3 Payments Held in Trust**

4 All payments due under this Consent Judgment shall be delivered within fifteen (15) days of
5 the date that this Consent Judgment is fully executed by the Parties, and held in trust by Naterra’s
6 counsel until the Court grants the motion for approval of this Consent Judgment contemplated by
7 Section 5. Naterra’s counsel shall provide Leeman’s counsel with written notice following its
8 receipt of the settlement funds from Naterra. Thereafter, Naterra’s counsel shall hold the funds in
9 trust and disburse the payments to Leeman’s counsel within two (2) business days after the Effective
10 Date.

11 **3.4 Payment Address**

12 All payments under this Consent Judgment shall be delivered to:

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

18 **4. CLAIMS COVERED AND RELEASED**

19 **4.1 Leeman’s Public Release of Proposition 65 Claims**

20 Leeman, acting on her own behalf and in the public interest, releases Naterra and its parents,
21 subsidiaries, affiliated entities under common ownership, directors, officers, employees,
22 shareholders and attorneys (“Releasees”), and each entity to whom Naterra directly or indirectly
23 distributes or sells the Covered Products including, but not limited to, its downstream distributors,
24 wholesalers, customers, retailers, franchisers, cooperative members, licensors and licensees
25 (“Downstream Releasees”) for any violation arising under Proposition 65 based on a failure to warn
26 about exposures to DEHP in Products manufactured, imported, sold, or distributed for sale by
27 Naterra prior to the Effective Date. Compliance with the terms of this Consent Judgment
28 constitutes compliance with Proposition 65 with respect to the alleged or actual failure to warn
by Naterra after the Effective Date.

1 **4.2 Leeman’s Individual Release of Claims**

2 Leeman, in her individual capacity only and *not* in her representative capacity, also provides a
3 release to Naterra, Releasees, and Downstream Releasees which shall be effective as a full and final
4 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
5 attorneys’ fees, damages, losses, claims, liabilities, and demands of Leeman of any nature, character
6 or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
7 exposures to DEHP in the Covered Products manufactured, imported, sold, distributed and/or offered
8 for sale or use by Naterra before the Effective Date.

9 **4.3 Naterra’s Release of Leeman**

10 Naterra, on its own behalf, and on behalf of its past and current agents, representatives,
11 attorneys, successors, and assignees, hereby waives any and all claims against Leeman and her
12 attorneys and other representatives, for any and all actions taken or statements made by Leeman and
13 her attorneys and other representatives, whether in the course of investigating claims, otherwise
14 seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products.

15 **5. COURT APPROVAL**

16 This Consent Judgment is not effective until it is approved and entered by the Court and shall
17 be null and void if it is not approved and entered by the Court within one year after it has been fully
18 executed by the Parties, or by such additional time to which the Parties may agree in writing.

19 **6. SEVERABILITY**

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

23 **7. GOVERNING LAW**

24 The terms of this Consent Judgment shall be governed by the laws of the state of California
25 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or
26 otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then
27 Naterra may provide written notice to Leeman of any asserted change in the law, and shall have no
28 further injunctive obligations pursuant to this Consent Judgment with respect to, and to the extent

1 that, the Covered Products are so affected.

2 **8. NOTICE**

3 Unless specified herein, all correspondence and notice required by this Consent Judgment
4 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
5 return receipt requested; or (iii) a recognized overnight courier to the following addresses:

6 For Naterra:

7 Jin Song, President
8 Naterra International, Inc.
9 1250 Freeport Parkway
Coppell, TX 75019

10 Greg Sperla, Esq.
11 Greenberg Traurig, LLP
1201 K Street, Suite 1100
Sacramento, CA 95814

12 For Leeman:

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

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

18 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

22 **10. POST EXECUTION ACTIVITIES**

23 Leeman agrees to comply with the reporting form requirements referenced in Health and
24 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
25 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of this Consent
26 Judgment, which Leeman shall take the lead to draft and file and Naterra shall support, including
27 appearing at the hearing if so required.
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11. MODIFICATION

This Consent Judgment may be modified only by: (i) a written agreement of the Parties and entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any Party, and the entry of a modified consent judgment by the Court.

12. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment and have read, understand, and agree to all of the terms and conditions contained herein.

AGREED TO:

AGREED TO:

Date: 3/27/2017

Date: 3-27-2017

By: 
WHITNEY R. LEEMAN, PH.D.

By: 
Jin Song, President
NATERRA INTERNATIONAL, INC.