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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SANTA CLARA
UNLIMITED CIVIL JURISDICTION

16 WHITNEY R. LEEMAN, PH.D.,

17 Plaintiff,

18 v.

19 BARNETT OUTDOORS, LLC; *et al.*,

20 Defendants.

Case No. 16CV289949

[PROPOSED] CONSENT JUDGMENT

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

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Whitney R. Leeman, Ph.D.
4 ("Leeman") and Barnett Outdoors, LLC ("Barnett"), with Leeman and Barnett each individually
5 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 improve human health by reducing or eliminating hazardous substances
9 contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 General Allegations**

15 Leeman alleges that Barnett manufactures, imports, sells, or distributes for sale in California,
16 archery bows with vinyl/PVC grips containing di(2-ethylhexyl)phthalate ("DEHP"), without first
17 providing the exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition
18 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

19 **1.5 Product Description**

20 Barnett's products that are covered by this Consent Judgment are defined as archery bows
21 with vinyl/PVC grips allegedly containing DEHP including, without limitation, the *Lil' Si Jr. Archery*
22 *Set, UPC #0 42609 01064 6*, which are manufactured, imported, distributed, sold and/or offered for
23 sale by Barnett in the State of California, hereinafter the "Product[s]."

24 **1.6 Notice of Violation**

25 On October 28, 2015, Leeman served Barnett and certain requisite public enforcement
26 agencies with a "60-Day Notice of Violation" ("Notice") alleging that Barnett violated Proposition 65

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1 when they failed to warn their customers and consumers in California that archery bows with
2 vinyl/PVC grips expose users to DEHP.

3 **1.7 Complaint**

4 On or about January 11, 2016, Leeman filed the instant action (“Complaint”), naming Barnett
5 as defendant for its alleged violations of Health and Safety Code section 25249.6 that are the subject
6 of the Notice.

7 **1.8 No Admission**

8 Barnett denies the material, factual, and legal allegations contained in the Notice and
9 Complaint, and maintain that all of the products that they have sold and distributed for sale in
10 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
11 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
12 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
13 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This
14 Section shall not, however, diminish or otherwise affect Barnett’s obligations, responsibilities, and
15 duties under this Consent Judgment.

16 **1.9 Jurisdiction**

17 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
18 jurisdiction over Barnett as to the allegations in the Complaint, that venue is proper in the County of
19 Santa Clara, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
20 Judgment.

21 **1.10 Effective Date**

22 For purposes of this Consent Judgment, the term “Effective Date” means the date the Court
23 enters an order approving of the Consent Judgment.

24 **2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS**

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date, and continuing thereafter, Barnett shall only purchase for
27 sale, manufacture for sale, import, sell, or distribute for sale in California “Reformulated Products,”
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1 or Products that are sold with a clear and reasonable warning pursuant to Section 2.2 below. For
2 purposes of this Consent Judgment, "Reformulated Products" are products that contain DEHP in
3 concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.
4 Environmental Protection Agency testing methodologies 3580A and 8270C, or any other
5 methodology utilized by federal or state agencies for the purpose of determining the DEHP content in
6 a solid substance.

7 **2.2 Product Warnings**

8 Commencing on the Effective Date, Barnett shall provide clear and reasonable warnings for
9 all Products as set forth in subsections 2.2(a) and (b) for all products that do not currently have
10 warnings and that do not qualify as Reformulated Products. Each warning shall be prominently
11 placed with such conspicuousness as compared with other words, statements, designs, or devices as
12 to render it likely to be read and understood by an ordinary individual under customary conditions
13 before purchase or use. Each warning shall be provided in a manner such that the consumer or user
14 understands to which *specific* Product the warning applies, so as to minimize the risk of consumer
15 confusion.

16 **(a) Retail Store Sales.**

17 **(i) Product Labeling.** Barnett shall affix a warning to the packaging, labeling,
18 or directly on each Product packaging provided for sale in retail outlets in California that states:

19 **WARNING:** This product contains DEHP, a chemical known
20 to the State of California to cause birth defects and
other reproductive harms.

21 Or,

22 **WARNING:** This product contains a chemical known
23 to the State of California to cause cancer and
birth defects or other reproductive harms.

24 Or,

25 **WARNING:** This product contains a chemical known
26 to the State of California to cause birth defects
or other reproductive harms.

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1 **WARNING:** This product contains a chemical known
2 to the State of California to cause birth defects
3 or other reproductive harms:

4 *[list products for which warning is required]*

5 **(b) Mail Order Catalog and Internet Sales.** In the event that Barnett sells Products via
6 mail order catalog and/or the internet, to customers located in California, after the Effective Date, that
7 are not Reformulated Products, Barnett shall provide warnings for such Products sold via mail order
8 catalog or the internet to California residents. Warnings given in the mail order catalog or on the
9 internet shall identify the *specific* Product to which the warning applies as further specified in
10 Sections 2.2(b)(i) and (ii).

11 **(i) Mail Order Catalog Warning.** Any warning provided in a mail order catalog
12 shall be in the same type size or larger than the Product description text within the catalog. The
13 following warning shall be provided on the same page and in the same location as the display and/or
14 description of the Product:

15 **WARNING:** This product contains DEHP, a chemical known
16 to the State of California to cause birth defects and
17 other reproductive harms.

18 Or,

19 **WARNING:** This product contains a chemical known
20 to the State of California to cause cancer and
21 birth defects or other reproductive harms.

22 Or,

23 **WARNING:** This product contains a chemical known
24 to the State of California to cause birth defects
25 or other reproductive harms.

26 Where it is impracticable to provide the warning on the same page and in the same location as
27 the display and/or description of the Product, Barnett may utilize a designated symbol to cross
28 reference the applicable warning and shall define the term “designated symbol” with the following
language on the inside of the front cover of the catalog or on the same page as any order form for the
Product(s):

1 **WARNING:** Certain products identified with this symbol ▼
2 and offered for sale in this catalog contain DEHP,
3 a chemical known to the State of California to
4 cause birth defects and other reproductive harms.

5 Or,

6 **WARNING:** Certain products identified with this symbol ▼
7 and offered for sale in this catalog contain
8 a chemical known to the State of California to
9 cause cancer and birth defects or other reproductive harms.

10 Or,

11 **WARNING:** Certain products identified with this symbol ▼
12 and offered for sale in this catalog contain a
13 chemical known to the State of California to
14 cause birth defects or other reproductive harms.

15 The designated symbol must appear on the same page and in close proximity to the display
16 and/or description of the Product. On each page where the designated symbol appears, Barnett must
17 provide a header or footer directing the consumer to the warning language and definition of the
18 designated symbol.

19 (ii) **Internet Website Warning.** A warning shall be given in conjunction with the
20 sale of the Products via the internet, which warning shall appear either: (a) on the same web page on
21 which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the
22 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
23 during the checkout process. The following warning statement shall be used and shall appear in any
24 of the above instances adjacent to or immediately following the display, description, or price of the
25 Product for which it is given in the same type size or larger than the Product description text:

26 **WARNING:** This product contains DEHP, a chemical known
27 to the State of California to cause birth defects
28 and other reproductive harms.

29 Or,

30 **WARNING:** This product contains a chemical known
31 to the State of California to cause cancer and
32 birth defects or other reproductive harms.

33 Or,

1 **WARNING:** This product contains a chemical known
2 to the State of California to cause birth defects
3 or other reproductive harms.

4 Alternatively, the designated symbol may appear adjacent to or immediately following the
5 display, description, or price of the Product for which a warning is being given, provided that the
6 following warning statement also appears elsewhere on the same web page, as follows:

7 **WARNING:** This product contains DEHP, a chemical known
8 to the State of California to cause birth defects and
9 other reproductive harms.

10 Or,

11 **WARNING:** This product contains a chemical known
12 to the State of California to cause cancer
13 and birth defects or other reproductive harms.

14 Or,

15 **WARNING:** This product contains a chemical known
16 to the State of California to cause birth defects
17 or other reproductive harms.

18 **3. MONETARY SETTLEMENT TERMS**

19 **3.1 Civil Penalty Payments**

20 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
21 to in this Consent Judgment, Barnett shall pay \$13,000 in civil penalties. Each civil penalty payment
22 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-
23 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
24 Assessment (“OEHHA”) and twenty-five percent (25%) of the funds allocated to Leeman.

25 **3.1.1 Initial Civil Penalty**

26 Within ten (10) business days of the mutual execution of this Consent Judgment, Barnett shall
27 issue a check for its initial civil penalty payment in the amount of \$4,000 to “Troutman Sanders LLP,
28 c/o Daniel Rashtian, Esq.” Troutman Sanders LLP shall provide The Chanler Group with written
 confirmation within five business days of receipt that the funds have been deposited in a trust
 account. Within ten (10) business days of the date the Court enters an order approving of the Consent
 Judgment, Troutman Sanders LLP shall issue a check for the initial civil penalty payment to

1 “Whitney R. Leeman, Ph.D., Client Trust Account.” Leeman subsequently will direct 75% of the
2 initial civil penalty to OEHHA.

3 **3.1.2 Final Civil Penalty**

4 On or before February 28, 2017, Barnett shall make a final civil penalty payment of \$9,000.
5 Leeman agrees that the final civil penalty payment shall be waived in its entirety if, no later than
6 February 15, 2017, an officer of Barnett provides Leeman with written certification that Barnett is no
7 longer manufacturing for sale in California the Products, or is only manufacturing for sale in
8 California, Reformulated Products as defined in section 2.1, above. In providing such certification,
9 Barnett is not required to guarantee that its Products distributed prior to the Effective Date are
10 Reformulated Products. The option to certify reformulation in lieu of making the final civil penalty
11 payment required by this Section is a material term and time is of the essence.

12 **3.2 Reimbursement of Fees and Costs**

13 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
15 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
16 other settlement terms had been finalized, Barnett expressed a desire to resolve Leeman’s fees and
17 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman’s
18 and her counsel under general contract principles and the private attorney general doctrine codified at
19 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
20 execution of this Consent Judgment, and approval thereof by the Court. Barnett shall, within ten (10)
21 business days of the mutual execution of this Consent Judgment, issue a check payable to “Troutman
22 Sanders LLP, c/o Daniel Rashtian” in the amount of fees and costs of \$26,500 to be held in trust by
23 Troutman Sanders LLP for The Chanler Group. Troutman Sanders LLP shall provide The Chanler
24 Group with written confirmation within five business days of receipt that the funds have been
25 deposited in a trust account. Within ten (10) business days of the date the Court enters an order
26 approving of the Consent Judgment, Troutman Sanders LLP shall issue a check payable to “The
27 Chanler Group” to the address found in Section 3.3.1 below.

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1 **3.3 Payment Procedures**

2 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
3 this Consent Judgment are to be delivered within ten (10) business days of the mutual execution of
4 this Consent Judgment, to Troutman Sanders LLP, and released to The Chanler Group and Leeman
5 within ten (10) business days of the date the Court enters an order approving of the Consent
6 Judgment, according to the following subsections.

7 **3.3.1 Payment Address**

8 All payments and tax documentation for OEHHA, Leeman, and her counsel shall be
9 delivered to:

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

15 **3.3.2 Requirement for Tax Identification Information**

16 Prior to the transfer of any funds from Troutman Sanders LLP to The Chanler Group
17 required by this Consent Judgment, The Chanler Group shall provide tax identification information
18 to Troutman Sanders LLP. If Troutman Sanders LLP does not receive such information prior to the
19 date on which the Court enters an order approving of the Consent Judgment, Troutman Sanders
20 LLP’s obligation to transfer funds shall be tolled until the tax identification information is received.

21 **4. CLAIMS COVERED AND RELEASED**

22 **4.1 Leeman’s Public Release of Proposition 65 Claims**

23 Leeman, acting on her own behalf and in the public interest, releases Barnett and its parents,
24 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
25 attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
26 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,
27 franchisers, cooperative members, licensors, and licensees (“Downstream Releasees”) for violations
28 arising under Proposition 65 for unwarned exposures to DEHP from the Products sold by Barnett
prior to the Effective Date, as set forth in the Notice.

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 Barnett, 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, arising out of alleged or actual exposures to DEHP from the Products sold or distributed for
7 sale by Barnett before the Effective Date.

8 **4.3 Barnett’s Release of Leeman**

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

14 **5. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the Court and shall
16 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
17 has been fully executed by the Parties.

18 **6. SEVERABILITY**

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

22 **7. GOVERNING LAW**

23 The terms of this Consent Judgment shall be governed by the laws of the state of California
24 and apply within the state of California. In the event that Proposition 65 is repealed, preempted, or is
25 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Barnett may
26 provide written notice to Leeman of any asserted change in the law, and shall have no further
27 obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Products are
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1 so affected. Nothing in this Consent Judgment shall be interpreted to relieve Barnett from any
2 obligation to comply with any pertinent state or federal toxics control laws.

3 **8. NOTICE**

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

7 For Barnett:

8 Daniel Rashtian, Esq.
9 Troutman Sanders LLP
10 5 Park Plaza, Suite 1400
Irvine, California 92614

11 For Leeman:

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

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

17 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

21 **10. POST EXECUTION ACTIVITIES**

22 Leeman agrees to comply with the reporting form requirements referenced in Health and
23 Safety Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety
24 Code section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
25 furtherance of obtaining such approval, Leeman and Barnett agree to mutually employ their best
26 efforts, and that of their counsel, to support the entry of this agreement as judgment, and to obtain
27 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
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1 shall include, at a minimum, cooperating with the drafting and filing of the necessary moving papers,
2 and supporting the motion for judicial approval.

3 **11. MODIFICATION**

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

7 **12. AUTHORIZATION**

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

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AGREED TO:

AGREED TO:

Date: 6/2/16

Date: _____

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

By: _____
David Barnett, Vice-President
Barnett Outdoors, LLC

1 shall include, at a minimum, cooperating with the drafting and filing of the necessary moving papers,
2 and supporting the motion for judicial approval.

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


10 **AGREED TO:**

AGREED TO:

11
12 Date: _____

Date: 6-3-2016

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14 By: _____
15 WHITNEY R. LEEMAN, PH.D.

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17 
18 By: _____
19 David Barnett, Vice-President
20 Barnett Outdoors, LLC
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