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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

WHITNEY R. LEEMAN, PH.D.,
Plaintiff,
v.
SPORTSMAN'S WAREHOUSE, INC.; *et al.*,
Defendants.

Case No. CIV1600530
[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 Sportsman's Warehouse, Inc. ("SWI"), with Leeman and SWI 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 SWI 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 SWI manufactures, imports, sells, or distributes for sale in California, (1)
16 vinyl/PVC safety vests containing di(2-ethylhexyl)phthalate ("DEHP"), (2) gloves with vinyl/PVC
17 components containing DEHP, and (3) tent/shelter fabrics containing tris(1,3-dichloro-2-
18 propyl)phosphate ("TDCPP") and tris(2-chloroethyl) phosphate ("TCEP"), without first providing the
19 exposure warning required by Proposition 65. DEHP is listed pursuant to Proposition 65 as a
20 chemical known to the State of California to cause birth defects and other reproductive harm.
21 TDCPP and TCEP are listed pursuant to Proposition 65 as chemicals known to the State of California
22 to cause cancer.

23 **1.5 Product Description**

24 SWI products that are covered by this Consent Judgment are defined as (1) vinyl/PVC safety
25 vests containing DEHP, including, but not limited to *Breaux Utility Hunting Accessories Vinyl Safety*
26 *Vest Blaze Orange, UPC #7 35345 50145 4*, ("Vest Products"), (2) gloves with vinyl/PVC
27 components containing DEHP, including, but not limited to, the *Golden Stag All Purpose Gloves*,

28

1 *Style 813, UPC #7 63476 08133 0*, (“Glove Products”), and (3) tent/shelter fabrics containing TDCPP
2 and TCEP, including, but not limited to, the *Ledge Pro Series Ridge 4 Tent, UPC #0 87125 70050 3*,
3 (“Tent Products”), which are manufactured, imported, distributed, sold and/or offered for sale by
4 SWI in the State of California. The Vest Products, Glove Products, and Tent Products shall
5 hereinafter be referred to as the “Product[s].”

6 **1.6 Notices of Violation**

7 On December 1, 2015, Leeman served SWI and certain requisite public enforcement agencies
8 with a “60-Day Notice of Violation” (“Notice”) alleging that SWI violated Proposition 65 when they
9 failed to warn their customers and consumers in California that vinyl/PVC safety vests expose users
10 to DEHP. On March 23, 2016, Leeman served SWI and certain requisite public enforcement
11 agencies with a “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”) alleging that
12 SWI violated Proposition 65 when they failed to warn their customers in California that gloves with
13 vinyl/PVC components expose users to DEHP, and that tent/shelter fabrics expose users to TDCPP
14 and TCEP. The Notice and the Supplemental Notice shall hereinafter be referred to as the “Notices”.

15 **1.7 Complaint**

16 On or about February 10, 2016, Leeman filed the instant action (“Complaint”), naming SWI
17 as defendant for its alleged violations of Health and Safety Code section 25249.6 that are the subject
18 of the Notice. On or about July 7, 2016, Leeman filed a First Amended Complaint, naming SWI as
19 defendant for its alleged violations of Health and Safety Code section 25249.6 that are the subject of
20 the Notices.

21 **1.8 No Admission**

22 SWI denies the material, factual, and legal allegations contained in the Notices and
23 Complaint, and maintain that all of the products that they have sold and distributed for sale in
24 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
25 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
26 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
27 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This
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1 Section shall not, however, diminish or otherwise affect SWI's obligations, responsibilities, and
2 duties under this Consent Judgment.

3 **1.9 Jurisdiction**

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over SWI as to the allegations in the Complaint, that venue is proper in the County of
6 Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Consent
7 Judgment.

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term "Effective Date" means the date that this
10 Consent Judgment is approved by the Court, including any unopposed tentative rulings.

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

12 **2.1 Reformulated Products**

13 Commencing on the Effective Date, and continuing thereafter, SWI shall only purchase for
14 sale, manufacture for sale, import, sell, or distribute for sale in California "Reformulated Products,"
15 or Products that are sold with a clear and reasonable warning pursuant to Section 2.2 below. For
16 purposes of this Consent Judgment, "Reformulated Products" are (1) Vest Products and Glove
17 Products that contain DEHP in concentrations of less than 0.1 percent (1,000 parts per million) when
18 analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and
19 8270C, or any other methodology utilized by federal or state agencies for the purpose of determining
20 the DEHP content in a solid substance, and (2) Tent Products that contain no more than 25 parts per
21 million of TDCPP or TCEP in any material, components, or constituent of a subject Tent Product,
22 when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies 3545 and
23 8270C, or equivalent methodology utilized by federal or state agencies to determine the presence, and
24 measure the quantity, of TDCPP and/or TCEP in a solid substance.

25 **2.2 Product Warnings**

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

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

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

10 For Vest Products and Glove Products, the warning shall state:

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

14 Or, for Tent Products, the warning shall state:

15 ⚠ **WARNING:** This product contains TDCPP and/or TCEP,
16 flame retardant chemicals known to the State
17 of California to cause cancer.

18 (ii) **Point-of-Sale Warnings.** Alternatively, SWI may provide warning signs in
19 the form below to its customers in California with instructions to post the warnings in close proximity
20 to the point of display of the Products. Such instruction sent to SWI's customers shall be sent by
21 certified mail, return receipt requested.

22 For Vest Products and Glove Products, the warning shall state:

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

26 Or, for Tent Products, the warning shall state:

27 ⚠ **WARNING:** This product contains TDCPP and/or TCEP,
28 flame retardant chemicals known to the State
of California to cause cancer.

1 Where more than one Product is sold in proximity to other like items or to those that do not
2 require a warning (*e.g.*, Reformulated Products as defined in Section 2.1), the following statement
3 shall be used:¹

4 For Vest Products and Glove Products, the warning shall state:

5
6 ⚠ **WARNING:** The following products contain DEHP, a chemical known
7 to the State of California to cause birth defects and other
8 reproductive harms:

 [*list products for which warning is required*]

9 Or, for Tent Products, the warning shall state:

10 ⚠ **WARNING:** The following products contain TDCPP and/or TCEP,
11 flame retardant chemicals known to the State
12 of California to cause cancer.


 [*list products for which warning is required*]

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


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

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27 ¹For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product
28 are offered for sale close enough to each other that the consumer, under customary conditions of purchase, could not reasonably determine which of the two products is subject to the warning sign.

1 For Vest Products and Glove Products, the warning shall state:


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

5 Or, for Tent Products, the warning shall state:


6  **WARNING:** This product contains TDCPP and/or TCEP,
7 flame retardant chemicals known to the State
8 of California to cause cancer.

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

13 For Vest Products and Glove Products, the warning shall state:

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

18 Or, for Tent Products, the warning shall state:

19  **WARNING:** Certain products identified with this symbol ▼
20 and offered for sale in this catalog contain TDCPP and/or
21 TCEP, flame retardant chemicals known to the State of
22 California to cause cancer.

23 The designated symbol must appear on the same page and in close proximity to the display
24 and/or description of the Product. On each page where the designated symbol appears, SWI must
25 provide a header or footer directing the consumer to the warning language and definition of the
26 designated symbol.

27 **(ii) Internet Website Warning.** A warning shall be given in conjunction with the
28 sale of the Products via the internet, which warning shall appear either: (a) on the same web page on
which a Product is displayed; (b) on the same web page as the order form for a Product; (c) on the

1 same page as the price for any Product; or (d) on one or more web pages displayed to a purchaser
2 during the checkout process. The following warning statement shall be used and shall appear in any
3 of the above instances adjacent to or immediately following the display, description, or price of the
4 Product for which it is given in the same type size or larger than the Product description text:

5 For Vest Products and Glove Products, the warning shall state:

6
7 **⚠ WARNING:** This product contains DEHP, a chemical known
8 to the State of California to cause birth defects
and other reproductive harms.

9 Or, for Tent Products, the warning shall state:

10 **⚠ WARNING:** This product contains TDCPP and/or TCEP,
11 flame retardant chemicals known to the State
12 of California to cause cancer.

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

16 For Vest Products and Glove Products, the warning shall state:

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

20 Or, for Tent Products, the warning shall state:

21 **⚠ WARNING:** This product contains TDCPP and/or TCEP,
22 flame retardant chemicals known to the State
23 of California to cause cancer.

24 **3. MONETARY SETTLEMENT TERMS**

25 **3.1 Civil Penalty Payments**

26 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
27 to in this Consent Judgment, SWI shall pay \$12,000 in civil penalties. Each civil penalty payment
28 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-

1 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
2 Assessment (“OEHHA”) and twenty-five percent (25%) of the funds allocated to Leeman.

3 **3.1.1 Initial Civil Penalty**

4 Within ten (10) days of the mutual execution of this Consent Judgement, SWI shall
5 issue a check for its initial civil penalty payment in the amount of \$2,000 to “Gordon & Rees, LLP.”
6 Gordon & Rees LLP shall provide The Chanler Group with written confirmation within five days of
7 receipt that the funds have been received. Within five (5) days of the date the Court approves this
8 Consent Judgment, including any unopposed tentative rulings, Gordon & Rees LLP shall issue two
9 checks for the initial civil penalty payment to: (1) “Whitney R. Leeman, Ph.D., Client Trust
10 Account,” in the amount of \$500, and (2) “Office Environmental Health Hazard Assessment” in the
11 amount of \$1,500.

12 **3.1.2 Final Civil Penalty**

13 On or before June 30, 2017, SWI shall make a final civil penalty payment of \$10,000.
14 Leeman agrees that the final civil penalty payment shall be waived in its entirety if, no later than June
15 15, 2017, an officer of SWI provides Leeman with written certification that it is no longer offering or
16 distributing for sale in California the Products, or is only offering for sale and distributing for sale in
17 California, Reformulated Products as defined in section 2.1, above. The option to certify
18 reformulation in lieu of making the final civil penalty payment required by this Section is a material
19 term and time is of the essence.

20 **3.2 Reimbursement of Fees and Costs**

21 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
22 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
23 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
24 other settlement terms had been finalized, SWI expressed a desire to resolve Leeman’s fees and costs.
25 The Parties then attempted to (and did) reach an accord on the compensation due to Leeman’s and her
26 counsel under general contract principles and the private attorney general doctrine codified at
27 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
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1 execution of this Consent Judgment. SWI shall, within ten (10) days of the mutual execution of this
2 Consent Judgment, issue a check payable to “Gordon & Rees LLP” in the amount of fees and costs of
3 \$17,000 to be held by Gordon & Rees LLP for The Chanler Group. Gordon & Rees LLP shall
4 provide The Chanler Group with written confirmation within five days of receipt that the funds have
5 been deposited in a trust account. Within five (5) days of the date the Court approves this Consent
6 Judgment, including any unopposed tentative rulings, Gordon & Rees LLP shall issue a check
7 payable to “The Chanler Group” to the address found in Section 3.3.1 below.

8 **3.3 Payment Procedures**

9 Except for the final civil penalty payment required by Section 3.1.2, all payments due under
10 this Consent Judgment are to be delivered within ten (10) days of the mutual execution of this
11 Consent Judgment, to Gordon & Rees LLP, and released to The Chanler Group and Leeman within
12 five (5) days of the date the Court approves this Consent Judgment, including any unopposed
13 tentative rulings, according to the following subsections.

14 **3.3.1 Payment Address**

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

17 The Chanler Group
18 Attn: Proposition 65 Controller
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710

22 **4. CLAIMS COVERED AND RELEASED**

23 **4.1 Leeman’s Public Release of Proposition 65 Claims**

24 Leeman, acting on her own behalf and in the public interest, releases SWI and its
25 subsidiaries, affiliated entities under common ownership, directors, officers, employees, and
26 attorneys (“Releasees”) and each entity to whom it directly or indirectly distributes or sells the
27 Products, including but not limited to its downstream distributors, wholesalers, customers, retailers,
28 franchisers, cooperative members, licensors, and licensees, (“Downstream Releasees”) for (1)
violations arising under Proposition 65 for unwarned exposures to DEHP from the Vest Products
and Glove Products, and (2) for violations arising under Proposition 65 for unwarned exposures to

1 TDCPP or TCEP from the Tent Products, sold by SWI prior to the Effective Date, as set forth in the
2 Notices.

3 **4.2 Leeman's Individual Release of Claims**

4 Leeman, in her individual capacity only and *not* in her representative capacity, also provides a
5 release to SWI, Releasees, and Downstream Releasees which shall be effective as a full and final
6 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
7 attorneys' fees, damages, losses, claims, liabilities and demands of Leeman of any nature, character
8 or kind, arising out of alleged or actual exposures to (1) DEHP from the Vest Products and Glove
9 Products, and (2) from exposures to TDCPP or TCEP from the Tent Products, sold or distributed for
10 sale by SWI before the Effective Date.

11 **4.3 SWI's Release of Leeman**

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

17 **5. COURT APPROVAL**

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

21 **6. SEVERABILITY**

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

25 **7. GOVERNING LAW**

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

6 **8. NOTICE**

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

10 For SWI:

11 Jeff Herman, Esq.
12 Gordon & Rees LLP
13 101 W. Broadway, Suite 2000
San Diego, CA 92101

14 For Leeman:

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

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

20 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

24 **10. POST EXECUTION ACTIVITIES**

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

6 **11. MODIFICATION**

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

10 **12. AUTHORIZATION**

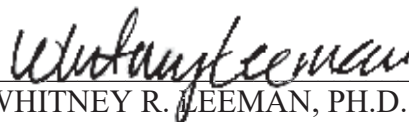
11 The undersigned are authorized to execute this Consent Judgment and have read, understood,
12 and agree to all of the terms and conditions contained herein.

13
14 **AGREED TO:**

AGREED TO:

15 Date: 1/10/2017

Date: _____

16
17 By: 
18 WHITNEY R. LEEMAN, PH.D.

By: _____
JOHN SHAEFER, PRESIDENT
SPORTSMAN'S WAREHOUSE, INC.

1 furtherance of obtaining such approval, Leeman and SWI agree to mutually employ their best efforts,
2 and that of their counsel, to support the entry of this agreement as judgment, and to obtain judicial
3 approval of their settlement in a timely manner. For purposes of this Section, "best efforts" shall
4 include, at a minimum, cooperating with the drafting and filing of the necessary moving papers, and
5 supporting the motion for judicial approval.

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8 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
9 Party, and the entry of a modified consent judgment by the Court.

10 **12. AUTHORIZATION**

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

13 **AGREED TO:**

14
15 Date: _____

16
17 By: _____
18 WHITNEY R. LEEMAN, PH.D.

AGREED TO:

15 Date: 1/19/17

16
17 By: *Kevan Talbot*
18 KEVAN TALBOT, CFO
19 SPORTSMAN'S WAREHOUSE, INC.

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