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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 COUNTY OF MARIN
12 UNLIMITED CIVIL JURISDICTION
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16 WHITNEY R. LEEMAN, PH.D.,

17 Plaintiff,

18 v.

19 GENESCO INC.; *et al.*,

20 Defendants.
21

Case No. CIV1600968

[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”) on the one hand, and Genesco Inc. and Hat World, Inc. (collectively “Settling
5 Defendants”) on the other, with Leeman and Settling Defendants each individually referred to as a
6 “Party” and collectively as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendants**

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

15 **1.4 General Allegations**

16 Leeman alleges that Settling Defendants manufacture, import, sell, or distribute for sale in
17 California, hat luggage cases with vinyl/PVC shoulder straps containing di(2-ethylhexyl)phthalate
18 (“DEHP”), without first providing the exposure warning required by Proposition 65. DEHP is listed
19 pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and
20 other reproductive harm.

21 **1.5 Product Description**

22 Settling Defendants’ products that are covered by this Consent Judgment are defined as hat
23 luggage cases with vinyl/PVC shoulder straps containing DEHP including, without limitation, *Lids*
24 *Luggage, Item 20326157-990, UPC #4 02023 33297 5*, which are manufactured, imported,
25 distributed, sold and/or offered for sale by Settling Defendants in the State of California, hereinafter
26 the “Product[s].”
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1 **1.6 Notice of Violation**

2 On December 29, 2015, Leeman served Settling Defendants and certain requisite public
3 enforcement agencies with a “60-Day Notice of Violation” (“Notice”) alleging that Settling
4 Defendants violated Proposition 65 when they failed to warn their customers and consumers in
5 California that the Products expose users to DEHP. To the best of the Parties’ knowledge, no public
6 enforcer has commenced and is diligently prosecuting an action to enforce the violations alleged in
7 the Notice.

8 **1.7 Complaint**

9 On or about March 17, 2016, Leeman filed the instant action (“Complaint”), naming Settling
10 Defendants as defendants for alleged violations of Health and Safety Code section 25249.6 that are
11 the subject of the Notice.

12 **1.8 No Admission**

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

21 **1.9 Jurisdiction**

22 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
23 jurisdiction over Settling Defendants as to the allegations in the Complaint, that venue is proper in the
24 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
25 Consent Judgment.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term “Effective Date” means the date that this
3 Consent Judgment is approved by the Court.

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

5 **2.1 Reformulated Products**

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

14 **2.2 Product Warnings**


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

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

24 **(i) Product Labeling.** Settling Defendants shall affix a warning to the
25 packaging, labeling, or directly on each Product packaging provided for sale in retail outlets in
26 California that states:

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


1 Or,

2  **WARNING:** This product can expose you to chemicals, including
3 DEHP, which is known to the State of California to cause
4 cancer and birth defects or other reproductive harm. For more
information go to www.P65Warnings.ca.gov

5 (ii) **Point-of-Sale Warnings.** Alternatively, Settling Defendants may provide
6 warning signs in the form below to their customers in California with instructions to post the
7 warnings in close proximity to the point of display of the Products. Such instruction sent to Settling
8 Defendants' customers shall be sent by certified mail, return receipt requested.

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

12 Or,

13  **WARNING:** This product can expose you to chemicals, including
14 DEHP, which is known to the State of California to cause
15 cancer and birth defects or other reproductive harm. For more
information go to www.P65Warnings.ca.gov

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

19 **WARNING:** The following products contain DEHP, a chemical known
20 to the State of California to cause birth defects and other
21 reproductive harms:

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


23 Or,

24
25
26
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 Alternatively, the designated symbol may appear adjacent to or immediately following the
2 display, description, or price of the Product for which a warning is being given, provided that the
3 following warning statement also appears elsewhere on the same web page, as follows:

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

7 Or,

8  **WARNING:** This product can expose you to chemicals, including
9 DEHP, which is known to the State of California to cause
10 cancer and birth defects or other reproductive harm. For more
11 information go to www.P65Warnings.ca.gov

12 **3. MONETARY SETTLEMENT TERMS**

13 **3.1 Civil Penalty Payments**

14 Pursuant to Health and Safety Code section 25249.7(b), in settlement of all the claims referred
15 to in this Consent Judgment, Settling Defendants shall pay \$14,000 in civil penalties. Each civil
16 penalty payment shall be allocated according to Health and Safety Code section 25249.12(c)(1) and
17 (d) with seventy-five percent (75%) of the funds paid to the California Office of Environmental
18 Health Hazard Assessment (“OEHHA”) and twenty-five percent (25%) of the funds allocated to
19 Leeman.

20 **3.1.1 Initial Civil Penalty**

21 Within fifteen (15) days of the mutual execution of this Consent Judgement,
22 Settling Defendants shall issue two checks for their initial civil penalty payment as follows: (1) a
23 check in the amount of \$3,000 made payable to California Office of Environmental Health Hazard
24 Assessment (“OEHHA”) and (2) a check in the amount of \$1,000 made payable to “Whitney R.
25 Leeman, Ph.D., Client Trust Account,” and shall deliver said checks to Morgan, Lewis & Bockius
26 LLP, c/o Deanne Miller, Esq. Defendants’ counsel shall provide The Chanler Group with written
27 confirmation within five days of receipt that the check has been received. Within five (5) days of the
28 date the Court approves this Consent Judgment, Morgan, Lewis & Bockius LLP shall deliver the

1 checks for the initial civil penalty payment to Plaintiff Whitney R. Leeman, Ph.D. by mailing to the
2 Chanler Group, pursuant to Section 3.3.1. Leeman shall be responsible for delivering OEHHA's
3 portion of any penalty payment(s) made under this Consent Judgment.

4 **3.1.2 Final Civil Penalty**

5 On or before July 30, 2017, Settling Defendants shall make a final civil penalty
6 payment of \$10,000. Pursuant to title 11 California Code of Regulations, section 3203(c), Leeman
7 agrees that the final civil penalty payment shall be waived in its entirety if, no later than July 15,
8 2017, an officer of Settling Defendants provide Leeman with written certification to verify that they
9 are no longer offering or distributing for sale in California the Products, or are only offering for sale
10 and distributing for sale in California, Reformulated Products as defined in section 2.1, above. The
11 option to certify reformulation in lieu of making the final civil penalty payment required by this
12 Section is a material term and time is of the essence.

13 **3.2 Reimbursement of Attorney's Fees and Costs**

14 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
16 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
17 other settlement terms had been finalized, Settling Defendants expressed a desire to resolve Leeman's
18 fees and costs. The Parties then attempted to (and did) reach an accord on the compensation due to
19 Leeman's and her counsel under general contract principles and the private attorney general doctrine
20 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
21 mutual execution of this Consent Judgment. Settling Defendants shall, within fifteen (15) days of the
22 mutual execution of this Consent Judgment, issue a check payable to "The Chanler Group" in the
23 amount of fees and costs of \$31,000 to be held by Morgan, Lewis & Bockius LLP for The Chanler
24 Group. Morgan, Lewis & Bockius LLP shall provide The Chanler Group with written confirmation
25 within five days of receipt that the check has been received. Within five (5) days of the date the Court
26 approves this Consent Judgment, Morgan, Lewis & Bockius LLP shall deliver the check by mailing
27 same to the Chanler Group, c/o Warren Klein.
28

1 **3.3 Payment Procedures**

2 Except for the final civil penalty payment required by Section 3.1.2, the checks for payment
3 due under this Consent Judgment are to be delivered within fifteen (15) days of the mutual execution
4 of this Consent Judgment, to Morgan, Lewis & Bockius LLP, and released to The Chanler Group
5 and Leeman within five (5) days of the date the Court approves this Consent Judgment, according to
6 the following subsection.

7 **3.3.1 Payment Address**

8 All payments required under this Consent Judgment and tax documentation for
9 OEHHA, Leeman, and her counsel shall be delivered to:

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

14 **4. CLAIMS COVERED AND RELEASED**

15 **4.1 Leeman’s Public Release of Proposition 65 Claims**

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

23 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition
24 65 with respect to the failure to warn about exposures to DEHP in Products sold or distributed after
25 the Effective Date.

26 **4.2 Leeman’s Individual Release of Claims**

27 Leeman, in her individual capacity only and *not* in her representative capacity, also provides a
28 release to Settling Defendants, Releasees, and Downstream Releasees which shall be effective as a

1 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
2 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Leeman of any nature,
3 character or kind, whether known or unknown, suspected or unsuspected, arising out of alleged or
4 actual exposures to phthalates, including DEHP, from the Products sold or distributed for sale by
5 Settling Defendants before the Effective Date.

6 **4.3 Settling Defendants' Release of Leeman**

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

13 **5. COURT APPROVAL**

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

17 **6. SEVERABILITY**

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

21 **7. GOVERNING LAW**

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

1 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Settling
2 Defendants from any 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 Setting Defendants:

8 Office of the General Counsel
9 Genesco, Inc.
10 1415 Murfreesboro Road
11 Nashville, TN 37202

12 With a copy to:

13 Deanne Miller, Esq.
14 Morgan, Lewis & Bockius LLP
15 300 South Grand Ave., 22nd Floor
16 Los Angeles, CA 90071

17 For Leeman:

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

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

25 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

10. POST EXECUTION ACTIVITIES

Leeman agrees to comply with the reporting form requirements referenced in Health and

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

8 **11. MODIFICATION**

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

12 **12. AUTHORIZATION**

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


15 **AGREED TO:**

16
17 Date: 11/4/2016

18
19 By: 
20 WHITNEY R. LEEMAN, PH.D.


AGREED TO:

21 Date: November 18, 2016

22 By: 
23 Roger Sisson
24 Senior Vice President and General Counsel
25 GENESCO INC.

AGREED TO:

26 Date: November 18, 2016

27 By: 
28 Roger Sisson
Senior Vice President and General Counsel
HAT WORLD, INC.