

COPY

1 Clifford A. Chanler, State Bar No. 135534
2 David S. Lavine, State Bar No. 166744
3 HIRST & CHANLER LLP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Telephone: (510) 848-8880
8 Facsimile: (510) 935-8116

9 Attorneys for Plaintiff
10 WHITNEY R. LEEMAN, Ph.D.

F I L E D
C lerk of the Superior Court

SEP 18 2008

By: P. GARCIA, Deputy

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF SAN DIEGO - NORTH COUNTY DIVISION
13 UNLIMITED CIVIL JURISDICTION

BY FAX

14 WHITNEY R. LEEMAN, Ph.D.,
15 Plaintiff,

16 v.

17 LEGOLAND CALIFORNIA, LLC; and DOES
18 1 through 150, inclusive,
19 Defendants.

Case No. 17-2008-00052624

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF STIPULATION AND
ORDER RE: CONSENT JUDGMENT**

Date: September 5, 2008
Time: 1:30 p.m.
Dept.: 27
Judge: Hon. Jacqueline M. Stern

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[PROPOSED] JUDGMENT

1 In the above-entitled action, Plaintiff WHITNEY R. LEEMAN, Ph.D. and Defendant
2 LEGOLAND CALIFORNIA, LLC, having agreed through their respective counsel that judgment
3 be entered pursuant to the terms of the Proposition 65 settlement agreement in the form of a
4 Stipulation and [Proposed] Order Re: Consent Judgment entered into by the parties, and after
5 issuing an order approving this Proposition 65 settlement agreement and entering the Stipulation
6 and Order Re: Consent Judgment on September 5, 2008.

7 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil
8 Procedure §664.5, judgment is entered in accordance with the terms of the Stipulation and Order
9 Re: Consent Judgment attached hereto as **Exhibit 1** and lodged concurrently herewith.

10 **IT IS SO ORDERED.**

11
12 Dated: SEP 18 2008

JACQUELINE M. STERN
JUDGE OF THE SUPERIOR COURT

Exhibit 1

1 Clifford A. Chanler, State Bar No. 135534
David S. Lavine, State Bar No. 166744
2 HIRST & CHANLER LLP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile (510) 848-8118

5 Attorneys for Plaintiff
6 WHITNEY R. LEEMAN, Ph.D.

7 Lawrence Campitiello, State Bar No. 110274
McCOLLOCH & CAMPITIELLO LLP
8 5900 La Place Court #100
Carlsbad, CA 92008
9 Telephone: (760) 804-0153
Facsimile: (760) 931-9086

10 Attorneys for Defendant
11 LEGOLAND CALIFORNIA, LLC

12
13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 COUNTY OF SAN DIEGO – NORTH COUNTY DIVISION
15 UNLIMITED JURISDICTION
16

17 WHITNEY R. LEEMAN, Ph.D.,

18 Plaintiff,

19 v.

20 LEGOLAND CALIFORNIA, LLC, and DOES 1
21 through 150, inclusive,

22 Defendants.
23

Case No. 34-2008-00052624

**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 Plaintiff and Settling Defendant.** This Consent Judgment (“Consent
3 Judgment” or “Agreement”) is entered into by and between plaintiff Whitney R. Leeman, Ph.D.
4 (hereafter “Leeman” or “Plaintiff”) and Settling Defendant Legoland California, LLC (hereafter
5 “Legoland” or “Settling Defendant”), with Plaintiff and Settling Defendant collectively referred
6 to as the “Settling Parties” and Leeman and Settling Defendant each being a “Party.”

7 **1.2 Plaintiff.** 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 and industrial products.

10 **1.3 Settling Defendant.** Legoland is a defendant named in the complaint, and is a
11 corporation that employs more than ten persons, and which manufactures, distributes and/or sells
12 Products as defined in section 1.5 in the State of California or has done so in the past.

13 **1.4 General Allegations.** Plaintiff alleges that Settling Defendant has
14 manufactured, distributed and/or sold in the State of California certain flame-broiled hamburgers
15 containing benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene, benzo[k]fluoranthene, and
16 indeno[1,2,3-cd]pyrene, which are chemicals listed pursuant to the Safe Drinking Water and
17 Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5 *et seq.*, also known
18 as Proposition 65, to cause cancer. Benz[a]anthracene, benzo[a]pyrene, benzo[b]fluoranthene,
19 benzo[k]fluoranthene, and indeno[1,2,3-cd]pyrene, shall be referred to herein as the “Listed
20 Chemicals.” Plaintiff alleges that consumption of Legoland’s flame-broiled hamburgers would
21 thereby expose consumers of that product to the Listed Chemicals in violation of Proposition 65.

22 **1.5 Product Descriptions.** The products that are covered by this Consent
23 Judgment are defined as follows: flame-broiled hamburgers containing the Listed Chemicals,
24 manufactured, sold and/or distributed by Settling Defendant in California. Such products
25 collectively are referred to herein as the “Products.”

26 **1.6 Notices of Violation.** On November 19, 2007, Leeman served Settling
27 Defendant and various public enforcement agencies with documents, entitled “60-Day Notice of
28 Violation” (“Notice”), that provided Settling Defendant and such public enforcers with notice that

1 alleged that Settling Defendant was in violation of Health & Safety Code §25249.6 for failing to
2 warn purchasers that certain Products that it sold expose users in California to the Listed
3 Chemicals.

4 1.7 **Complaint.** On March 25, 2008, Leeman, in the interest of the general public
5 in California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the
6 Superior Court for the County of San Diego against Legoland, and Does 1 through 150, alleging
7 violations of Health & Safety Code § 25249.6 based on the alleged exposures to the Listed
8 Chemicals contained in the Products sold by Settling Defendant.

9 1.8 **No Admission.** Settling Defendant denies the material factual and legal
10 allegations contained in Plaintiff’s Notice and Complaint and maintains that all products that it
11 has sold and distributed in California, including the Products, have been and are in compliance
12 with all laws. Nothing in this Consent Judgment shall be construed as an admission by Settling
13 Defendant of any fact, finding, issue of law, or violation of law, nor shall compliance with this
14 Agreement constitute or be construed as an admission by Settling Defendant of any fact, finding,
15 conclusion, issue of law or violation of law. However, this section shall not diminish or
16 otherwise affect the obligations, responsibilities and duties of Settling Defendant under this
17 Consent Judgment.

18 1.9 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the
19 Settling Parties stipulate that this Court has jurisdiction over the Settling Parties and concerning
20 the alleged violations at issue and personal jurisdiction over Settling Defendant as to the acts
21 alleged, that venue is proper in the County of San Diego, and that this Court has jurisdiction to
22 enter this Consent Judgment and to enforce the provisions thereof.

23 1.10 **Effective Date.** For purposes of this Consent Judgment, the “Effective Date”
24 shall be June 30, 2008.

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1 **2. INJUNCTIVE RELIEF: WARNINGS**

2 **2.1 Preliminary Statement.** After the Effective Date, Legoland shall not sell in
3 California Products containing the Listed Chemicals unless such Products are cooked on New
4 Broilers, or are sold with clear and reasonable warnings, as set out in this section.

5 **2.2 New Broiler Installation.** Should Legoland so opt, Legoland agrees to install
6 New Broilers at all locations at which it currently sells flame-broiled meat products, no later than
7 December 31, 2008. "New Broiler" refers to any broiler manufactured with flame-arresting
8 features designed to inhibit the formation of the PAHs, including, without limitation the Nieco
9 MBP 84 and the Duke Model 120 (Batch Broiler), which produce PAH levels non-detectable at a
10 one part-per-billion limit of detection, as confirmed by certification from the manufacturer or test
11 results ordered and obtained by Legoland. By June 30, 2008, Legoland shall certify to plaintiff
12 that it has ordered New Broilers for all locations where it currently prepares flame-cooked meat.
13 By December 31, 2008, Legoland shall certify to plaintiff that it has installed New Broilers for all
14 locations where it currently prepares flame-cooked meat.

15 **2.3 Warnings.** Unless and until Legoland installs New Broilers, it will warn its
16 customers and employees, as set out in the following subsections.

17 **2.3.1 Warning Message.** Any warning issued for Products pursuant to
18 this section shall be prominently placed with such conspicuousness as compared with other
19 words, statements, designs, or devices so as to render it likely to be read and understood by an
20 ordinary individual under customary conditions before purchase or use. The warning message
21 provided, under any of the permitted warning methods, shall be as follows:

22 **WARNING**

23 Flame-cooked burgers sold or served here contain chemicals known as
24 PAHs, which are known to the State of California to cause cancer.

25 **2.3.2 Warning Methods.** This Section describes Legoland's options for
26 satisfying the warning obligations required by this section. Signs must be:

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1 (a) located at or on a counter or bar where food is purchased, on a wall
2 either adjacent and parallel to or clearly visible to consumers standing at the counter where food
3 is purchased; and

4 (b) located at any other place that is reasonably likely to be seen and
5 read by customers entering the restaurant to order food; and

6 (c) located at any other place that is reasonably likely to be seen and
7 read by Legoland's employees during the ordinary course of business; and

8 (d) not located at any of the following locations: on an entrance or exit
9 door, on a window, on a restroom door, in a restroom, in a hallway that leads only to restrooms,
10 or on a refuse container.

11 2.3.3 **Sign Warnings.** Warnings shall be set forth on a sign at least 10
12 inches high by 10 inches wide, with the word "WARNING" centered three-quarters of an inch
13 from the top of the sign in ITC Garamond bold condensed type face all in one-inch capital letters.
14 Three-sixteenths of an inch from the base of the word "warning" shall be a line extending from
15 left to right across the width of the sign one-sixteenth of an inch in thickness. Centered one-half
16 inch below the line shall be the body of the warning message set forth in section 2.3.1 in ITC
17 Garamond bold condensed type face. For the body of the warning message, left and right
18 margins of at least one-half of an inch, and a bottom margin of at least one-half inch shall be
19 observed. Larger signs shall bear substantially the same proportions of type size and spacing to
20 sign dimension as the sign 10 inches high by 10 inches wide.

21 2.3.4 **Submission of Warning Materials.** Settling Defendant shall
22 submit signs to the Plaintiff for a determination that they comply with all the provisions of section
23 2 of this Consent Judgment. No sign shall be deemed to comply with this Consent Judgment
24 unless it has been submitted to and approved by the Plaintiff or the Court.

25 2.3.5 **Scope.** Nothing in this Consent Judgment requires that warnings be
26 given for Products sold to consumers outside the State of California.

27 2.3.6 **Retention of Expert Consultant.** Should Legoland opt not to
28 install New Broilers, within 120 days of approval of this Consent Judgment, Settling Defendant

1 shall retain a consultant to advise it as to steps it can take to minimize the formation, and the
2 depositing on its Products, of the Listed Chemicals during the flame-broiling process. Following
3 such advisement, Settling Defendant will institute good-faith measures to implement the steps
4 recommended by the consultant. Settling Defendant will set aside a minimum of \$20,000 for this
5 engagement. Within six months of retention, Settling Defendant shall send a letter to plaintiff
6 informing her of the steps taken, or still to be taken, to implement and put into practice the
7 consultant's recommendations.

8 **3. MONETARY PAYMENTS.**

9 **Payments Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to Health &
10 Safety Code Section 25249.7(b), Settling Defendant shall pay \$50,000 on or before the Effective
11 Date as civil penalties. If Legoland has by that date committed to installing and has ordered New
12 Broilers to replace all existing flame-broilers, this payment shall be reduced by 75%. This
13 payment shall be made payable to "Hirst & Chanler LLP in Trust For Whitney R. Leeman," and
14 shall be delivered to Plaintiff's counsel at the following address:

15 HIRST & CHANLER LLP
16 Attn: Prop 65 Controller
17 2560 Ninth Street
18 Parker Plaza, Suite 214
Berkeley, CA 94710-2565

19 After Court approval of this Consent Judgment, this sum shall be apportioned by Plaintiff in
20 accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of
21 California's Office of Environmental Health Hazard Assessment and the remaining 25% of these
22 monies retained by Plaintiff as provided by Health & Safety Code § 25249.12(d). Plaintiff shall
23 bear all responsibility for apportioning and paying to the State of California the appropriate
24 amounts paid in accordance with this subsection.

25 **4. REIMBURSEMENT OF FEES AND COSTS**

26 The Settling Parties attempted to, and did, reach an accord on the compensation due to
27 Plaintiff and her counsel under the private attorney general doctrine codified at Code of Civil
28 Procedure § 1021.5 for all work performed through the Court's approval of the Agreement.

1 Under the private attorney general doctrine codified at Code of Civil Procedure § 1021.5, Settling
2 Defendant shall reimburse Plaintiff and her counsel for fees and costs, incurred as a result of
3 investigating, bringing this matter to Settling Defendant's attention, litigating and negotiating a
4 settlement in the public interest, and seeking the Court's approval of this Consent Judgment.

5 Specifically, Settling Defendant shall pay Plaintiff and her counsel \$31,000 for all
6 attorneys' fees, expert and investigation fees, and litigation costs. The payment shall be made
7 payable to Hirst & Chanler LLP and shall be delivered to Plaintiff's counsel on or before the
8 Effective Date, at the following address:

9
10 HIRST & CHANLER LLP
11 Attn: Prop 65 Controller
12 2560 Ninth Street
13 Parker Plaza, Suite 214
14 Berkeley, CA 94710-2565

15 Except as specifically provided in this Consent Judgment, Settling Defendant shall have
16 no further obligation with regard to reimbursement of Plaintiff's attorneys' fees and costs with
17 regard to the Products covered in this Action.

18 **5. RELEASE OF ALL CLAIMS**

19 5.1 **Plaintiff's Release of Settling Defendant.** In further consideration of the
20 representations, warranties and commitments herein contained, and for the payments to be made
21 pursuant to sections 3 and 4, Plaintiff, on behalf of herself, her past and current agents,
22 representatives, attorneys, successors assignees, or any person or entity who may now or in the
23 future claim through her in a derivative manner, and in the interest of the general public, hereby
24 waives all rights to institute or participate in, directly or indirectly, any form of legal action and
25 releases all claims, including, without limitation, all actions, causes of action, in law or in equity,
26 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses
27 (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature
28 whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against
Settling Defendant and each of its distributors, wholesalers, licensors, licensees, auctioneers,

1 retailers, dealers, customers, owners, purchasers, users, parent company, corporate affiliates,
2 subsidiaries and their respective officers, directors, attorneys, representatives, shareholders,
3 agents, representatives, insurers and employees (collectively, "Settling Defendant's Releasees")
4 arising under Proposition 65 related to Settling Defendant's or Settling Defendant's Releasees'
5 alleged failure to warn about exposures to or identification of the Listed Chemicals contained in
6 or on the Products. It is specifically understood and agreed that the Settling Parties and the Court
7 intend that Settling Defendant's compliance with the terms of this Consent Judgment resolves all
8 issues and liability, now and in the future (so long as Settling Defendant and its releasees comply
9 with the terms of the Consent Judgment) concerning Settling Defendants' compliance with the
10 requirements of Proposition 65 as to the Listed Chemicals in or on the Products.

11 5.2 **Settling Defendant's Release of Plaintiff.** Settling Defendant waives all rights
12 to institute any form of legal action and releases all claims against Plaintiff, or her attorneys or
13 representatives, for any or all actions taken or statements made by Plaintiff or her attorneys or
14 representatives, in the course of seeking enforcement of Proposition 65 in association with this
15 Action.

16 **6. COURT APPROVAL**

17 This Consent Judgment is not effective until it is approved and entered by the Court and
18 shall be null and void if it is not approved and entered by the Court within one year after it has
19 been fully executed by all Settling Parties, in which event any monies that have been provided to
20 Plaintiff or her counsel pursuant to section 3 and section 4 above shall be refunded within fifteen
21 (15) days. In the event that this Consent Judgment is not entered within one year due to one or
22 more of the following occurrences, this provision will be tolled as follows: if an appeal is entered
23 from the entry of the Consent Judgment, this provision will be tolled during the pendency of the
24 appeal; and/or if the Court takes the motion to approve the consent judgment under submission,
25 this provision will be tolled during the period of submission.

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1 **7. SEVERABILITY**

2 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
3 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable
4 provisions remaining shall not be adversely affected.

5 **8. ATTORNEYS' FEES**

6 In the event that a dispute arises with respect to any provision(s) of this Consent
7 Judgment, the prevailing Party shall, except as otherwise provided herein, be entitled to recover
8 reasonable and necessary costs and reasonable attorneys' fees incurred from the resolution of
9 such dispute, with the exception that if Settling Defendant brings a motion to modify the Consent
10 Judgment, Settling Defendant will not be entitled to recover any costs or attorneys' fees incurred
11 in connection with that motion.

12 **9. GOVERNING LAW**

13 The terms of this Consent Judgment shall be governed by the laws of the State of
14 California and apply within the State of California. In the event that Proposition 65 is repealed or
15 is otherwise rendered inapplicable by reason of law generally, or as to the Products or Listed
16 Chemicals specifically, then Settling Defendant shall have no further obligations pursuant to this
17 Consent Judgment with respect to, and to the extent that, those Products are so affected.

18 **10. NOTICES**

19 All correspondence and notices required to be provided pursuant to this Consent Judgment
20 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,
21 return receipt requested or (ii) overnight courier on either Party by the other at the addresses listed
22 below. Either Party, from time to time, may specify a change of address to which all notices and
23 other communications shall be sent.

24
25 For Plaintiff:
26 Whitney R. Leeman
27 c/o Hirst & Chanler LLP
28 2560 Ninth Street
 Parker Plaza, Suite 214
 Berkeley, CA 94710-2565

 For Settling Defendant:
 Legoland California, LLC
 c/o Lawrence Campitiello
 McColloch & Campitiello LLP
 5900 La Place Court #100
 Carlsbad, CA 92008

1 **11. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile, each of which
3 shall be deemed an original, and all of which, when taken together, shall constitute one and the
4 same document.

5 **12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

6 Plaintiff agrees to comply with the reporting form requirements referenced in Health &
7 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall
8 present this Consent Judgment to the California Attorney General’s Office within five (5) days
9 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment
10 will then be served on the Attorney General’s Office at least forty-five (45) days prior to the date
11 a hearing is scheduled on such motion in the Superior Court for the County of San Diego unless
12 the Court allows a shorter period of time.

13 **13. ADDITIONAL POST-EXECUTION ACTIVITIES**

14 The Settling Parties shall mutually employ their best efforts to support the entry of this
15 Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a
16 timely manner. The Settling Parties acknowledge that, pursuant to Health & Safety Code
17 § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment.
18 Accordingly, the Settling Parties agree to file a Joint Motion to Approve the Agreement (“Joint
19 Motion”) within a reasonable period of time after the Execution Date (*i.e.*, not to exceed thirty
20 (30) days unless otherwise agreed to by the Settling Parties’ counsel based on unanticipated
21 circumstances). Plaintiff’s counsel shall prepare a declaration in support of the Joint Motion
22 which shall, *inter alia*, set forth support for the fees and costs to be reimbursed pursuant to
23 Section 4. Settling Defendant shall have no additional responsibility to Plaintiff pursuant to
24 C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with
25 respect to the preparation and filing of the Joint Motion and its supporting declaration or with
26 regard to Plaintiff’s counsel appearing for a hearing or related proceedings thereon.

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1 **14. MODIFICATION**

2 This Consent Judgment may be modified only by: (1) written agreement of the Settling
3 Parties and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of
4 any Party as provided by law and upon entry of a modified Consent Judgment by the Court. The
5 Attorney General shall be served with notice of any proposed modification to this Consent
6 Judgment at least fifteen (15) days in advance of its consideration by the Court.

7 **15. AUTHORIZATION**

8 The undersigned are authorized to execute this Consent Judgment on behalf of their
9 respective Settling Parties and have read, understood and agree to all of the terms and conditions
10 of this Consent Judgment.

11 **AGREED TO:**

AGREED TO:

12 Date: 6/2/08

Date: _____

14 By: *Whitney R. Leeman*
15 PLAINTIFF, WHITNEY R. LEEMAN

By: _____
DEFENDANT, LEGOLAND CALIFORNIA, L

16 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

17 Date: 6/3/08
18 HIRST & CHANLER LLP

Date: _____
MCCOLLOCH & CAMPITIELLO LLP

19 By: *David Lavine*
20 David Lavine
21 Attorneys for Plaintiff
WHITNEY R. LEEMAN

By: _____
Lawrence Campitiello
Attorneys for Defendant
LEGOLAND CALIFORNIA, LLC

22 **IT IS SO ORDERED.**

23 Date: _____

JUDGE OF THE SUPERIOR COURT

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14. MODIFICATION

This Consent Judgment may be modified only by: (1) written agreement of the Settling Parties and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party as provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days in advance of its consideration by the Court.

15. AUTHORIZATION

The undersigned are authorized to execute this Consent Judgment on behalf of their respective Settling Parties and have read, understood and agree to all of the terms and conditions of this Consent Judgment.

AGREED TO:

AGREED TO:

Date: _____

Date: 5/29/08

By: _____
PLAINTIFF, WHITNEY R. LEEMAN

By: 
DEFENDANT, LEGOLAND CALIFORNIA, L

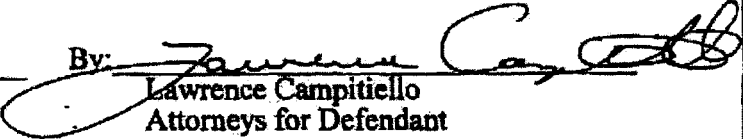
APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____
HIRST & CHANLER LLP

Date: 6-3-08
McCOLLOCH & CAMPITIELLO LLP

By: _____
David Lavine
Attorneys for Plaintiff
WHITNEY R. LEEMAN

By: 
Lawrence Campitiello
Attorneys for Defendant
LEGOLAND CALIFORNIA, LLC

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT