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6 WHITNEY R. LEEMAN, PH.D.

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 COUNTY OF MARIN  
9 UNLIMITED CIVIL JURISDICTION  
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12 WHITNEY R. LEEMAN, PH.D., )

Case No. CIV1304144

13 Plaintiff, )

**[PROPOSED] CONSENT JUDGMENT**

14 v. )

15 PARTRADE TRADING COMPANY, LLC; )  
16 and DOES 1-150, inclusive, )

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

17 Defendants. )  
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1           **1. INTRODUCTION**

2           **1.1 Whitney R. Leeman, Ph.D. and Partrade Trading Company, LLC**

3           This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D.  
4           (“Leeman” or “Plaintiff”) and defendant Partrade Trading Company, LLC (“Partrade” or  
5           “Defendant”), with Plaintiff and Defendant collectively referred to as the “Parties” and each  
6           individually referred to as “Party.”

7           **1.2 Plaintiff**

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

11          **1.3 Defendant**

12          Partrade employs ten or more persons and is a person in the course of doing business for  
13          purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &  
14          Safety Code § 25249.6, *et seq.* (“Proposition 65”).

15          **1.4 General Allegations**

16          Leeman alleges that Partrade has manufactured, imported, distributed, and/or sold hand tools  
17          with vinyl/PVC grips containing di(2-ethylhexyl)phthalate (“DEHP”) in California without the  
18          health hazard warnings required by Proposition 65. DEHP is listed pursuant to Proposition 65 as  
19          known to the State of California to cause birth defects and other reproductive harm.

20          **1.5 Product Description**

21          The products that are covered by this Consent Judgment are defined as hand tools with  
22          vinyl/PVC grips specifically limited to the following: (1) the *Partrade Hoof Pick Vinyl Covered*,  
23          #244545 (#7 15519 44545 6); (2) the *6-Way Revolving Leather Punch*; and (3) the *Fence Plier 10*”,  
24          which Partrade manufactured, assembled, imported, distributed, and/or sold in the State of  
25          California, hereinafter referred to collectively as the “Noticed Products.”

26          In addition to the above, this Consent Judgment covers the *Jr. Hot Pink Glitter Curry Comb*,  
27          which Partrade manufactured, assembled, imported, distributed, and/or sold in the State of  
28          California, hereinafter referred to as the “Additional Product.” The Noticed Products and the

1 Additional Product are hereinafter referred to collectively as the “Products.”

2 **1.6 Notice of Violation**

3 On May 17, 2013, Leeman served Partrade and various public enforcement agencies, with a  
4 document entitled “60-Day Notice of Violation” (“Notice”) that provided the recipients with notice  
5 of alleged violations of Proposition 65 for failing to warn consumers that the Noticed Products  
6 exposed users in California to DEHP. To the best of the Parties’ knowledge, no public enforcer has  
7 commenced and is diligently prosecuting the allegations set forth in the Notice.

8 **1.7 Complaint**

9 On or about October 8, 2013, Leeman, who was and is acting in the interest of the general  
10 public in California, filed a complaint (“Complaint” or “Action”) in the Superior Court in and for  
11 the County of Marin against Partrade and Does 1 through 150, alleging, *inter alia*, violations of  
12 Proposition 65 based on the alleged exposures to DEHP contained in the Noticed Products.

13 **1.8 No Admission**

14 Partrade denies the material, factual and legal allegations contained in Leeman’s Notice and  
15 Complaint and maintains that all Products it has sold and distributed in California have been and are  
16 in compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission  
17 by Partrade of any fact, finding, issue of law, or violation of law, nor shall compliance with this  
18 Consent Judgment constitute or be construed as an admission by Partrade of any fact, finding,  
19 conclusion, issue of law, or violation of law. However, this Section shall not diminish or otherwise  
20 affect Partrade’s obligations, responsibilities, and duties under this Consent Judgment.

21 **1.9 Consent to Jurisdiction**

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

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term “Effective Date” shall mean the date this  
28 Consent Judgment is approved by the Court.

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

2                Commencing on the Effective Date, Partrade shall only manufacture, assemble, import,  
3        distribute, sell, and/or offer for sale in California Products that are either “Reformulated Products”  
4        as defined in Section 2.1 below or Products that contain the proper health hazard warnings pursuant  
5        to Section 2.2 below.

6                **2.1        Reformulation Standards**

7                Reformulated Products are defined as those Products containing less than or equal to 0.1  
8        percent (1,000 parts per million) DEHP in each Accessible Component when analyzed pursuant to  
9        EPA testing methodologies 3580A and 8270C. “Accessible Component,” as used in this Consent  
10       Judgment, means a component of a Product that can be touched by a person during normal,  
11       intended and foreseeable use of the Product.

12               **2.2        Product Warnings**

13               The Parties acknowledge and agree that Partrade has already implemented a warning  
14       program for all non-Reformulated Products manufactured, assembled, imported, distributed, sold,  
15       and/or offered for sale by Partrade in California, which provides as follows:

16                                **WARNING:** This Product Contains A Chemical Known To The  
17                                State Of California To Cause Cancer, Or Birth Defects Or Other  
18                                Reproductive Harm.

19               Partrade shall continue to use said warning on all existing inventory of non-Reformulated  
20       Products assembled, distributed, sold and/or offered for sale by Partrade in California. However,  
21       Partrade shall, for all new inventory of Products, other than Reformulated Products, manufactured,  
22       assembled, distributed, sold and/or offered for sale directly by Partrade in California, provide the  
23       clear and reasonable warnings set forth in subsections 2.2(a) and (b). Each warning shall be  
24       prominently placed with such conspicuousness as compared with other words, statements, designs,  
25       or devices as to render it likely to be read and understood by an ordinary individual under  
26       customary conditions before purchase or use. Each warning shall be provided in a manner such  
27       that the consumer or user understands to which *specific* Product the warning applies, so as to  
28       minimize the risk of consumer confusion.

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**(a) Retail Stores Sales.**

**(i) Product Labeling.** Partrade shall affix a warning to the packaging, labeling, or directly on each Product sold in retail outlets in California by Partrade or any person selling the Products, that states:

**WARNING:** This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

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

**WARNING:** This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

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

**WARNING:** This product contains chemicals, including DEHP, known to the State of California to cause birth defects and other reproductive harm.

**(b) Mail Order Catalog and Internet Sales.** In the event that Partrade sells Products via mail order catalog and/or the internet, to customers located in California, that are not Reformulated Products, Partrade shall provide warnings for such Products directly sold and/or offered for sale by Partrade via mail order catalog or the internet to California residents. Warnings given in the mail order catalog or on the internet shall identify the Product to which the warning applies as further specified in Sections 2.2(b)(i) and (ii).

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

1                               **WARNING:** This product contains chemicals, including DEHP,  
2   known to the State of California to cause birth  
3   defects and other reproductive harm.

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

9                               **WARNING:** Products identified with the following symbol ▼  
10   contain chemicals, including DEHP, known to the  
11   State of California to cause birth defects and other  
12   reproductive harm.

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

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

25                               **WARNING:** This product contains chemicals, including DEHP,  
26   known to the State of California to cause birth  
27   defects and other reproductive harm.

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

1           **WARNING:** Products identified on this page with the following symbol  
2                                   ▼ contain chemicals, including DEHP, known to  
3                                   the State of California to cause birth defects and  
4                                   other reproductive harm.

3           **3.     CIVIL PENALTY PAYMENTS**

4           In settlement of all the claims referred to in this Consent Judgment, Partrade shall pay a total  
5           of \$13,000 in civil penalties in accordance with this Section. Each penalty payment will be  
6           allocated in accordance with California Health & Safety Code §§ 25249.12(c)(1) & (d), with 75%  
7           of the funds remitted to the California Office of Environmental Health Hazard Assessment  
8           (“OEHHA”) and the remaining 25% of the penalty remitted to Leeman as follows:

9                   **3.1    Initial Civil Penalty**

10           Partrade shall pay an initial civil penalty in the amount of \$3,000. Partrade shall issue a  
11           check in the amount of \$3,000 to “Yukevich Cavanaugh” to be held in trust for OEHHA and  
12           Leeman within ten (10) days of the mutual execution of this Consent Judgment by the Parties.  
13           Yukevich Cavanaugh shall provide The Chanler Group with written confirmation upon receipt that  
14           the funds have been deposited in a trust account. Within five (5)days of the Effective Date,  
15           Yukevich Cavanaugh shall issue two separate checks for the initial civil penalty payment to: (a)  
16           “OEHHA” in the amount of \$2,250; and (b) “The Chanler Group in Trust for Dr. Whitney R.  
17           Leeman” in the amount of \$750.

18                   **3.2    Final Civil Penalty**

19           Partrade shall pay a final civil penalty of \$10,000 on or before September 5, 2014. The final  
20           civil penalty shall be waived in its entirety, however, if, no later than September 1, 2014, an officer  
21           of Partrade provides Leeman with written certification that, as of the date of such certification and  
22           continuing into the future, Partrade has met the reformulation standard specified in Section 2.1  
23           above, such that all Products manufactured, caused to be manufactured, imported, and/or caused to  
24           be imported by Partrade for direct distribution, and/or sale in California are Reformulated Products.  
25           The certification in lieu of a final civil penalty payment provided by this Section is a material term,  
26           and time is of the essence. Partrade need not certify or otherwise assume responsibility for non-  
27           Reformulated Products indirectly distributed and/or sold in the State of California after September  
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1 1, 2014, as long as (a) said non-Reformulated Products contain the proper health hazard warning  
2 pursuant to Section 2.2 above and (b) Patrade has reasonably notified those it distributes, sells or  
3 offers for sale to that said non-Reformulated Products are not to be distributed, sold or offered for  
4 sale in California. Partrade shall issue two separate checks for its final civil penalty payments to:  
5 (a) "OEHHA" in the amount of \$7,500; and (b) "The Chanler Group in Trust for Whitney R.  
6 Leeman" in the amount of \$2,500.

7 **3.3 Payment Procedures**

8 **3.3.1 Issuance of Payments.** Payments shall be delivered as follows:

9 (a) All payments owed to Leeman, pursuant to Sections 3.1 and 3.2,  
10 shall be delivered to the following payment address:

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

16 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to  
17 Sections 3.1 and 3.2, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at the  
18 following addresses:

19 For United States Postal Service Delivery:

20 Mike Gyurics  
21 Fiscal Operations Branch Chief  
22 Office of Environmental Health Hazard Assessment  
23 P.O. Box 4010  
24 Sacramento, CA 95812-4010

25 For Non-United States Postal Service Delivery:

26 Mike Gyurics  
27 Fiscal Operations Branch Chief  
28 Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

With a copy of the checks payable to OEHHA mailed to The Chanler Group at the address  
set forth above in 3.3.1(a), as proof of payment to OEHHA.



1                   **3.3.2 Issuance of 1099 Forms.** After each penalty payment, Partrade shall issue  
2 separate 1099 forms for each payment to Leeman, whose address and tax identification number  
3 shall be furnished upon request after this Consent Judgment has been fully executed by the Parties,  
4 and OEHHA at the addresses listed in Section 3.3.1(b) above.

5                   **4. REIMBURSEMENT OF PLAINTIFF’S FEES AND COSTS**

6                   The Parties reached an accord on the compensation due to Leeman and her counsel under  
7 general contract principles and the private attorney general doctrine codified at California Code of  
8 Civil Procedure § 1021.5, for all work performed through the mutual execution of this agreement.  
9 Partrade shall pay \$33,000 for fees and costs incurred as a result of investigating, bringing this  
10 matter to Partrade’s attention, negotiating a settlement in the public interest, and in obtaining the  
11 Court’s approval of this Consent Judgment in the public interest. Partrade shall issue a check  
12 payable to “Yukevich Cavanaugh” in the amount of \$33,000 within ten (10) days of the mutual  
13 execution of this Consent Judgment by the Parties. Yukevich Cavanaugh shall provide The Chanler  
14 Group with written confirmation upon receipt that the funds have been deposited in a trust account.  
15 Within five (5) days of the Effective Date, Yukevich Cavanaugh shall issue a check payable to “The  
16 Chanler Group” to the address listed in Section 3.3.1(a) above and shall issue a separate 1099 for  
17 fees and costs (EIN: 94-3171522),

18                   **5. CLAIMS COVERED AND RELEASED**

19                   **5.1 Leeman’s Public Release of Proposition 65 Claims**

20                   Leeman acting on her own behalf and in the public interest releases Partrade, its parents,  
21 subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys,  
22 and each entity to whom Partrade directly or indirectly distributes or sells Products, including, but  
23 not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative  
24 members, and licensees (“Releasees”), from all claims for violations of Proposition 65 up through  
25 the Effective Date based on exposure to DEHP from the Noticed Products as set forth in the Notice.  
26 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
27 with respect to exposures to DEHP from the Noticed Products as set forth in the Notice.  
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**5.2 Leeman’s Individual Release of Claims**

Leeman also, in her individual capacity only and *not* in her representative capacity, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of Leeman of any nature, character or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to DEHP in the Products manufactured, assembled, imported, distributed, and/or sold by Partrade.

**5.3 Partrade’s Release of Leeman**

Partrade on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Leeman, her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Leeman and her attorneys and other representatives, whether in the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with respect to the Products.

**6. COURT APPROVAL**

This Consent Judgment is not effective until it is approved and entered by the Court and shall be null and void if, for any reason, it is not approved and entered by the Court within one year after it has been fully executed by all Parties. If the Court does not approve and enter the Consent Judgment within one year of the date of execution by all Parties, any monies that have been provided to OEHHA or held in trust for Leeman or her counsel pursuant to Section 3, above, shall be refunded to Partrade within 15 days.

**7. SEVERABILITY**

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

**8. GOVERNING LAW**

The terms of this Consent Judgment shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed, preempted or

1 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Partrade  
2 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the  
3 extent that, the Products are so affected.

4 **9. NOTICES**

5 Unless specified herein, all correspondence and notices required to be provided pursuant to  
6 this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,  
7 (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the  
8 other party at the following addresses:

9 To Partrade:

10 Robert Harrell, President  
11 Partrade Trading Company, LLC  
12 3801 Commerce Drive  
Kinston, NC 28504

To Leeman:

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

13 With a copy to:

14 Raymond H. Hua  
15 Yukevich Cavanaugh  
355 South Grand Avenue  
16 15<sup>th</sup> Floor  
Los Angeles, CA 90071

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

19 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

20 This Consent Judgment may be executed in counterparts and by facsimile or .pdf signature,  
21 each of which shall be deemed an original, and all of which, when taken together, shall constitute  
22 one and the same document. A facsimile or .pdf signature shall be as valid as the original.

23 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

24 Leeman and her attorneys agree to comply with the reporting form requirements referenced  
25 in California Health & Safety Code § 25249.7(f).  
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**12. ADDITIONAL POST EXECUTION ACTIVITIES**

Leeman and Partrade agree to mutually employ their best efforts to support the entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Leeman shall draft and file, Partrade shall not oppose. If any third party objection to the noticed motion is filed, Leeman and Partrade shall work together to file a joint reply and appear at any hearing before the Court. This provision is a material component of the Consent Judgment and shall be treated as such in the event of a breach.

**13. MODIFICATION**

This Consent Judgment may be modified only: (1) by written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion of any party and entry of a modified Consent Judgment by the Court.

**14. ENTIRE AGREEMENT**

This Consent Judgment contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral, or otherwise, express or implied, other than those contained herein have been made by any party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties.

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15. **AUTHORIZATION**

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

**AGREED TO:**

**AGREED TO:**

Date: 4/7/14

Date: 4/9/14

By: Whitney R. Leeman  
Whitney R. Leeman, Ph.D.

By: Robert Savell  
Partrade Trading Company, LLC