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12 WHITNEY R. LEEMAN, PH.D.

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

16 WHITNEY R. LEEMAN, PH.D.,

17 Plaintiff,

18 v.

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

20 Defendants.

Case No. 16CV289949

**[PROPOSED] CONSENT JUDGMENT**

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

1     **1. INTRODUCTION**

2             **1.1 Parties**

3             This Consent Judgment is entered into by and between Whitney R. Leeman, Ph.D.  
4     ("Leeman") and Barnett Outdoors, LLC ("Barnett"), with Leeman and Barnett each individually  
5     referred to as a "Party" and collectively as the "Parties."

6             **1.2 Plaintiff**

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

10            **1.3 Defendant**

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

14            **1.4 General Allegations**

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

19            **1.5 Product Description**

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

24            **1.6 Notice of Violation**

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

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

3 **1.7 Complaint**

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

7 **1.8 No Admission**

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

16 **1.9 Jurisdiction**

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

21 **1.10 Effective Date**

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

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

25 **2.1 Reformulated Products**

26 Commencing on the Effective Date, and continuing thereafter, Barnett shall only purchase for  
27 sale, manufacture for sale, import, sell, or distribute for sale in California “Reformulated Products,”  
28

1 or Products that are sold with a clear and reasonable warning pursuant to Section 2.2 below. For  
2 purposes of this Consent Judgment, "Reformulated Products" are products that contain DEHP in  
3 concentrations of less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S.  
4 Environmental Protection Agency testing methodologies 3580A and 8270C, or any other  
5 methodology utilized by federal or state agencies for the purpose of determining the DEHP content in  
6 a solid substance.

## 7 **2.2 Product Warnings**

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

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

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

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

21 Or,

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

24 Or,

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

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(ii) **Point-of-Sale Warnings.** Alternatively, Barnett 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 instruction sent to Barnett customers shall be sent by certified mail, return receipt requested.

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

Or,

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

Or,

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

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:<sup>1</sup>

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

*[list products for which warning is required]*

Or,

**WARNING:** The following products contain a chemical known to the State of California to cause cancer and birth defects or other reproductive harms:

*[list products for which warning is required]*

Or,

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<sup>1</sup>For purposes of the Settlement Agreement, "sold in proximity" shall mean that the Product and another similar product 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                   **WARNING:** This product contains a chemical known  
2                   to the State of California to cause birth defects  
3                   or other reproductive harms:

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

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

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

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

18                         Or,

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

22                         Or,

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

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

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

5                   Or,

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

10                  Or,

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

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

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

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

29                  Or,

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

33                  Or,

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

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

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

10                   Or,

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

14                   Or,

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

18                   **3.       MONETARY SETTLEMENT TERMS**

19   **3.1     Civil Penalty Payments**

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

25   **3.1.1   Initial Civil Penalty**

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



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

### 3 **3.1.2 Final Civil Penalty**

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

### 12 **3.2 Reimbursement of Fees and Costs**

13 The parties acknowledge that Leeman and her counsel offered to resolve this dispute without  
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to  
15 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the  
16 other settlement terms had been finalized, Barnett expressed a desire to resolve Leeman’s fees and  
17 costs. The Parties then attempted to (and did) reach an accord on the compensation due to Leeman’s  
18 and her counsel under general contract principles and the private attorney general doctrine codified at  
19 California Code of Civil Procedure section 1021.5 for all work performed through the mutual  
20 execution of this Consent Judgment, and approval thereof by the Court. Barnett shall, within ten (10)  
21 business days of the mutual execution of this Consent Judgment, issue a check payable to “Troutman  
22 Sanders LLP, c/o Daniel Rashtian” in the amount of fees and costs of \$26,500 to be held in trust by  
23 Troutman Sanders LLP for The Chanler Group. Troutman Sanders LLP shall provide The Chanler  
24 Group with written confirmation within five business days of receipt that the funds have been  
25 deposited in a trust account. Within ten (10) business days of the date the Court enters an order  
26 approving of the Consent Judgment, Troutman Sanders LLP shall issue a check payable to “The  
27 Chanler Group” to the address found in Section 3.3.1 below.  
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1           **3.3     Payment Procedures**

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

7                   **3.3.1   Payment Address**

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

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

15                   **3.3.2   Requirement for Tax Identification Information**

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

21           **4.     CLAIMS COVERED AND RELEASED**

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

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

1           **4.2    Leeman’s Individual Release of Claims**

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

8           **4.3    Barnett’s Release of Leeman**

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

14       **5.    COURT APPROVAL**

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

18       **6.    SEVERABILITY**

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

22       **7.    GOVERNING LAW**

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

3 **8. NOTICE**

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

7 For Barnett:

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

11 For Leeman:

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

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

17 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

21 **10. POST EXECUTION ACTIVITIES**

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

3 **11. MODIFICATION**

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

7 **12. AUTHORIZATION**

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

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**AGREED TO:**

**AGREED TO:**

Date: 6/2/16

Date: \_\_\_\_\_

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

By: \_\_\_\_\_  
David Barnett, Vice-President  
Barnett Outdoors, LLC

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

3 **11. MODIFICATION**

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

7 **12. AUTHORIZATION**

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


10 **AGREED TO:**

**AGREED TO:**

11  
12 Date: \_\_\_\_\_

Date: 6-3-2016

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14 By: \_\_\_\_\_  
15 WHITNEY R. LEEMAN, PH.D.

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18 By: \_\_\_\_\_  
19 David Barnett, Vice-President  
20 Barnett Outdoors, LLC  
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