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10 Attorneys for Plaintiffs
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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO

15 WHITNEY R. LEEMAN, PH.D.,
16 Plaintiff,

17 v.

18 ARC INTERNATIONAL NORTH AMERICA,
19 et al.
20 Defendants.

21 _____
22 AND CONSOLIDATED ACTIONS
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FILED
San Francisco County Superior Court

JUL 18 2005

GORDON PARK-LI, Clerk
BY: [Signature]
Deputy Clerk

Case No. CGC-03-418025

(Consolidated with Case Nos. 418030, 418031,
418033, 418034, 418036, 418037, 418039,
418040, 418041, 418042, 418044, 418045 and
419705)

Assigned For All Purposes To The
Honorable Judge James McBride, Dept.
501

**[PROPOSED] ORDER PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AGREEMENT**

Hearing: July 18, 2005
Time: 9:30 a.m.
Dept.: 501
Judge: Hon. James J. McBride

Action Filed: March 5, 2003

[PROPOSED] ORDER

1 In the above-entitled action, Plaintiff Michael Dipirro. and Defendant Certified
2 International Corporation, having agreed through their respective counsel that judgment be
3 entered pursuant to the terms of the Consent Judgment entered into by the Parties; and after
4 consideration of the papers submitted and the arguments presented, the Court finds that the
5 attached settlement agreement meets the criteria established by Senate Bill 471, in that:

- 6 1. Beginning on January 1, 2005, Defendants have agreed not to sell Products within
7 the State of California that contain lead, which is an exception to the warning
8 request under Cal. Health & Safety Code, § 25249(c) and Cal. Health & Safety
9 Code, §25249.7(f)(4)(A);
10 2. The reimbursement of fees and costs to be paid pursuant to the parties' Consent
11 Judgment is reasonable under California law; and
12 3. The payment in lieu of civil penalty amount to be paid pursuant to the parties'
13 Consent Judgment is reasonable.

14 IT IS HEREBY ORDERED that judgment be entered in accordance with the terms of the
15 Consent Judgment between the parties, attached hereto as Exhibit A.

16 IT IS SO ORDERED.

17 Dated: 7/18, 2005

18 Judge of the Superior Court

19 JAMES J. McBRIDE
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EXHIBIT A

1 Stephen S. Sayad, State Bar No. 104866
2 David D. Stein, State Bar No. 112074
3 Clifford A. Chanler, State Bar No. 135534
4 Laralei C. Schmohl, State Bar No. 203319
5 CHANLER LAW GROUP
6 655 Redwood Highway, Suite 216
7 Mill Valley, CA 94941
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10 Attorneys for Plaintiffs
11 Whitney R. Leeman, Ph.D.
12 and Michael DiPirro

13 SUPERIOR COURT OF CALIFORNIA - CITY AND COUNTY OF SAN FRANCISCO

14 WHITNEY R. LEEMAN, Ph.D.,

15 Plaintiff,

16 vs.

17 ARC INTERNATIONAL NORTH
18 AMERICA, INC., et al.,

19 Defendants.

Consolidated Case No. CGC-003-418025

(Consolidated with Case Nos. 418027, 418030,
418031, 418033, 418034, 418036, 418037,
418039, 418040, 418041, 418042, 418044,
418045, 419705, 422636, 422691, 424682 and
429467)

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

20 AND CONSOLIDATED ACTIONS.

21 **1. INTRODUCTION**

22 **1.1 Plaintiff and Settling Defendant** This Consent Judgment is entered into by and
23 between plaintiff Michael DiPirro (hereafter "Mr. DiPirro" or "Plaintiff") and defendant Certified
24 International Corporation (hereafter "Certified" or "Settling Defendant"), with Plaintiff and
25 Certified collectively referred to as the "Parties" and Mr. DiPirro and Certified each being a
26 "Party."

1 **1.2 Plaintiff** Mr. DiPirro is an individual residing in San Francisco, California, who seeks
2 to promote awareness of exposures to toxic chemicals and improve human health by reducing or
3 eliminating hazardous substances contained in consumer and industrial products.

4 **1.3 General Allegations** Mr. DiPirro alleges that Certified has manufactured, distributed
5 and/or sold in the State of California certain goblets, and other glassware intended for
6 consumption of food and/or beverages with colored designs on the exterior (with such products
7 referred to herein as the “Products”) with materials in that colored artwork, designs or markings
8 that contain lead (and/or lead compounds) that are listed pursuant to the Safe Drinking Water and
9 Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 *et seq.*, also known
10 as Proposition 65, to cause cancer and birth defects and other reproductive harm. Lead (and/or
11 lead compounds) shall be referred to herein as “Listed Chemicals.”

12 **1.4 Notices of Violation** On February 7, 2003, Mr. DiPirro served Certified and various
13 public enforcement agencies with documents, each entitled “60-Day Notice of Violation”
14 (“Notice”) that provided Certified and such public enforcers with notice that alleged that Certified
15 was in violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain
16 products that it sold expose users in California to lead and lead compounds. On or before August
17 15, 2004, Mr. DiPirro shall serve a Supplemental Notice on Certified and all required public
18 enforcers expanding Plaintiff’s prior allegations concerning the Products to include alleged
19 exposures to cadmium (“Supplemental Notice”)

20 **1.5 Complaint** On March 6, 2003, Mr. DiPirro, in the interest of the general public in
21 California, filed a complaint (hereafter referred to as “Complaint” or the “Action”) in the Superior
22 Court for the City and County of San Francisco against Certified, alleging violations of Health &
23 Safety Code § 25249.6 based on the alleged exposures to one or more of the Listed Chemicals
24 contained in certain products sold by Certified. Pursuant to orders of the San Francisco Superior
25 Court, the Complaint has been consolidated with a number of complaints under the caption of
26 *Whitney R. Leeman, Ph.D. v. ARC International, et al.*, San Francisco Superior Court Action
27 No. 418025. Upon the running of the 60-day periods associated with the issuance of the
28 Supplemental Notice, and provided that no authorized public enforcer of Proposition 65 initiates

1 an action against Certified based on the additional allegations therein contained in the interim, the
2 above captioned Complaint and this Consent Judgment shall be deemed such that the definition of
3 “Listed Chemicals” as used herein shall likewise be deemed to have been expanded from lead
4 (and/or lead compounds) to include the listed chemical, cadmium, as well.

5 **1.6 No Admission** Certified denies the material factual and legal allegations contained in
6 Plaintiff’s Notice and Complaint and maintains that all products that it has sold and distributed in
7 California including the Products have been and are in compliance with all laws. Nothing in this
8 Consent Judgment shall be construed as an admission by Certified of any fact, finding, issue of
9 law, or violation of law, nor shall compliance with this Agreement constitute or be construed as
10 an admission by Certified of any fact, finding, conclusion, issue of law or violation of law.
11 However, this section shall not diminish or otherwise affect the obligations, responsibilities and
12 duties of Certified under this Consent Judgment.

13 **1.7 Consent to Jurisdiction** For purposes of this Consent Judgment only, the Parties
14 stipulate that this Court has jurisdiction over the allegations of violations contained in the
15 Complaint and personal jurisdiction over Certified as to the acts alleged in the Complaint, that
16 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
17 Consent Judgment and to enforce the provisions thereof.

18 **1.8 Effective Date** For purposes of this Consent Judgment, the term “Effective Date”
19 shall mean the date upon which this Consent Judgment is approved and entered as a judgment by
20 the Court.

21 **2. INJUNCTIVE RELIEF: REFORMULATION**

22 Certified shall comply with each of the following terms of injunctive relief, including the
23 reformulation commitments, according to the deadlines set forth in subsections 2.1 through 2.6
24 below:
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1 **2.1 Interim Reformulation Requirements For Glassware Products Manufactured**
2 **Between the Effective Date and December 31, 2004.** All Products manufactured after the

3 Effective Date, but before December 31, 2004 that are reasonably likely to be sold in California
4 shall either:

- 5
- 6 i. use decorating materials containing less than 0.06% lead by weight
7 as measured at Certified's option, either before or after the material
8 is fired onto (or otherwise affixed to) the glassware, using a sample
9 size of the materials in question measuring approximately 50-100
10 mg and a test method of sufficient sensitivity to establish a limit of
11 quantitation (as distinguished from detection) of less than 600 parts
12 per million ("ppm"); or
 - 13 ii. achieve a result of 1.75 ppm or less for lead when tested under the
14 protocol attached as Exhibit A.

15 For purposes of this Agreement, a Product is "manufactured" at the time that the exterior
16 decoration is fired onto (or otherwise affixed to) the Product. This subsection (2.1) excludes
17 those Products covered by subsections 2.2 (children's products) and 2.4 (new designs).

18 **2.2 Final Reformulation Requirements for Products Intended For Use By And**
19 **Marketed And Sold To Children** All Products manufactured after October 31, 2004, that are

20 reasonably likely to be sold in California that are intended or marketed primarily for use by
21 children, shall only use decorating materials containing less than 0.06% lead by weight as
22 measured, at Certified's option, either before or after the material is fired onto (or otherwise
23 affixed to) the glassware, using a sample size of the materials in question measuring
24 approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit of
25 quantitation of less than 600 ppm. As used in this Consent Judgment, "intended or marketed
26 primarily for use by children" shall be deemed to mean the Products identified on Exhibit B
27 hereto and products analogous thereto (including, but not limited to, certain sizes of juice glasses,
28 as well as Products decorated with animated characters and which are typically used by children.)

In the event of a future dispute concerning whether a product is analogous to a Product identified
on Exhibit B (and hence "intended or marketed primarily for use by children"), Mr. DiPirro shall
notify Certified of his position in writing and shall meet and confer with Certified to attempt to

1 resolve the issue during a period not to exceed 30 days from the date of the written notice. If the
2 issue is resolved at this point such that a product will be considered to be “intended or marketed
3 primarily for use by children,” Certified shall be given up to two months to cease its current
4 manufacturing of the Product in question and to address the requirements of this subsection with
5 respect to that Product or discontinue it. If no such resolution is forthcoming, Mr. DiPirro and/or
6 Certified shall seek the opinion of the California Attorney General’s Office within 10 days
7 following the expiration of the 30-day meet and confer period or, if the Attorney General declines
8 to assist, institute, within thirty (30) days thereafter, a binding arbitration proceeding with the
9 American Arbitration Association in San Francisco whose decision shall be final. If the issue is
10 resolved by the arbitrator such that a product will be considered to be “intended or marketed
11 primarily for use by children,” Certified shall be given up to thirty (30) days to cease its current
12 manufacturing of the Product in question and to address the requirements of this subsection with
13 respect to that Product or discontinue it. The cost of any arbitration services utilized shall initially
14 be shared by both parties; therefore, the party not filing the petition shall be obligated to
15 reimburse the filing party fifty percent (50%) of the filing fees within ten (10) days of the
16 initiation of the proceeding. However, the prevailing party shall ultimately be entitled to, in
17 addition to attorneys’ fees as set forth in Section 8, reimbursement for its share of the American
18 Arbitration Association’s fees and costs.

19 **2.3 Interim Reformulation Requirements For Glassware Products Manufactured**
20 **Between January 1, 2005 and December 31, 2007** All Products manufactured between January
21 1, 2005 and December 31, 2007 that are reasonably likely to be sold in California shall either:

- 22 i. use decorating materials containing less than 0.06% lead by weight
23 as measured at a Certified’s option, either before or after the
24 material is fired onto (or otherwise affixed to) the glassware, using
25 a sample size of the materials in question measuring approximately
26 50-100 mg and a test method of sufficient sensitivity to establish a
27 limit of quantitation of less than 600 ppm; or
- 28 ii. achieve a result of 1.5 ppm or less for lead when tested under the
protocol attached as Exhibit A.

This subsection (2.3) excludes those Products covered by subsections 2.2 (children’s products)

1 and 2.4 (new designs).

2 **2.4 Final Reformulation Requirements For Newly-Designed Glassware Products** All

3 glassware Products manufactured after December 31, 2004, that are reasonably likely to be sold
4 in California and that contain *new* designs, shall use only decorating materials containing less
5 than 0.06% lead by weight as measured, at Certified's option, either before or after the material is
6 fired onto (or otherwise affixed to) the glassware, using a sample size of the materials in question
7 measuring approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit
8 of quantitation of less than 600 ppm. As used in this subsection, "new designs" shall be deemed
9 to mean Products involving any new patterns, colors or designs for which 25% or more of the
10 decoration of an existing pattern, color or design, as measured by decorated surface area, has been
11 modified. (However, if the new color, which is added to an existing design contains a lower lead
12 content than the color it is replacing by at least 50%, then the Product shall not be considered a
13 "new design" on the basis of that change in color.) In the event of a future dispute concerning
14 whether a product involves a "new design" for purposes of this subsection, Mr. DiPirro shall
15 notify Certified of his position in writing and shall meet and confer with Certified to attempt to
16 resolve the issue for a period not to exceed 30 days from the date of the written notice. If the
17 issue is resolved at this point such that a product will be considered to be of a "new design" for
18 purposes of this Consent Judgment, Certified shall be given up to two months to cease its current
19 manufacturing of the Product in question and to address the requirements of this subsection with
20 respect to that Product or discontinue it. If no such resolution is forthcoming, Mr. DiPirro and/or
21 Certified shall collectively seek the opinion of the California Attorney General's Office within 10
22 days following the expiration of the 30-day meet and confer period or, if the Attorney General
23 declines to assist, institute, within thirty (30) days a binding arbitration proceeding with the
24 American Arbitration Association in San Francisco whose decision shall be final. If the issue is
25 resolved by the arbitrator such that a product will be considered to be of "new design," Certified
26 shall be given up to thirty (30) days to cease its current manufacturing of the Product in question
27 and to address the requirements of this subsection with respect to that Product or discontinue it.
28 The cost of any arbitration services utilized shall initially be borne by both parties; therefore, in

1 which the party not filing the petition shall be obligated to reimburse the filing party fifty percent
2 (50%) of the filing fees within ten (10) days of the initiation of the proceeding. However, the
3 prevailing party shall ultimately be entitled to, in addition to attorneys' fees as set forth in Section
4 8, reimbursement for its share of the unreimbursed American Arbitration Association's fees and
5 costs.

6 **2.5 Final Reformulation Requirements For All Glassware Products Manufactured**
7 **After December 31, 2007** All Products manufactured after December 31, 2007, that are
8 reasonably likely to be sold in California shall only use decorating materials containing less than
9 0.06% lead by weight as measured, at Certified's option, either before or after the material is fired
10 onto (or otherwise affixed to) the glassware, using a sample size of the materials in question
11 measuring approximately 50-100 mg and a test method of sufficient sensitivity to establish a limit
12 of quantitation of less than 600 ppm.

13 **2.6 Additional Interim and Final Reformulation Requirements Concerning**
14 **Decoration Within the Lip and Rim Area, Including With Respect to Cadmium.** All
15 Products manufactured after the Effective Date that are reasonably likely to be sold in California
16 shall not contain *any* designs or decorations within the top twenty (20) millimeters of the exterior
17 surface as measured by the protocol attached as Exhibit C, except:

- 18 i. metallic-based designs or decorations containing no detectable lead
19 or cadmium. For purposes of this subsection, "no detectable lead or
20 cadmium" shall mean that neither lead nor cadmium is detected at a
21 level above .02% (for lead) or .08% (for cadmium) by weight,
22 respectively, using a sample size of the materials in question
23 measuring approximately 50-100 mg and a test method of sufficient
24 sensitivity to establish a limit of quantitation of less than 200 ppm;
25 and
26 ii. drinkware that has less than a total of sixty (60) millimeters of
27 decorating area below the external rim and which is not "intended
28 or marketed primarily for use by children" (e.g., shot glasses);
provided, however, that to be so excluded, such drinkware shall, as
of December 31, 2004, only be manufactured with decorating
materials containing less than 0.06% lead by weight as measured, at
Certified's option, either before or after the material is fired onto
(or otherwise affixed to) the glassware, using a sample size of the
materials in question measuring approximately 50-100 mg and a
test method of sufficient sensitivity to establish a limit of
quantitation of less than 600 ppm.

1 **2.7 Definition of Reformulated Products** Products that satisfy subsections 2.1. through
2 2.6, as applicable, are deemed "Reformulated Products."

3 **3. MONETARY PAYMENTS**

4 **3.1 Penalties Pursuant To Health & Safety Code §25249.7(b)** Pursuant to Health &
5 Safety Code § 25249.7(b), Settling Defendant shall pay \$17,650 in civil penalties, with the
6 penalty payment to be made on or before September 17,2004, and made payable to "Chanler Law
7 Group in Trust For Michael DiPirro."

8 **3.2 Apportionment of Penalties Received** All penalty monies received shall be
9 apportioned by Plaintiff in accordance with Health & Safety Code § 25192, with 75% of these
10 funds remitted to the State of California's Office of Environmental Health Hazard Assessment
11 and the remaining 25% of these penalty monies retained by Plaintiff as provided by Health &
12 Safety Code § 25249.12(d) Plaintiff shall bear all responsibility for apportioning and paying to
13 the State of California the appropriate civil penalties paid in accordance with this Section.

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

15 **4.1** The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute
16 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
17 this fee issue to be resolved after the material terms of the agreement had been settled. Settling
18 Defendant then expressed a desire to resolve the fee and cost issue shortly after the other
19 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
20 the compensation due to Plaintiff and his counsel under the private attorney general doctrine
21 codified at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date
22 of the Agreement. Under the private attorney general doctrine codified at Code of Civil
23 Procedure § 1021.5, Settling Defendant shall reimburse Plaintiff and his counsel for fees and
24 costs, incurred as a result of investigating, bringing this matter to Settling Defendant's attention,
25 litigating and negotiating a settlement in the public interest. Settling Defendant shall pay Plaintiff
26 and his counsel \$70,850 for all attorneys' fees, expert and investigation fees, and litigation costs.
27 The payment shall be delivered to Plaintiff's counsel at the address listed below on or before
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1 September 17, 2004. The payment should be made payable to the “Chanler Law Group In Trust
2 For Michael DiPirro.” Except as specifically provided in this Consent Judgment, Settling
3 Defendant shall have no further obligation with regard to reimbursement of Plaintiff’s attorney’s
4 fees and costs with regard to the Products covered in the Action.

5 **5. RELEASE OF THE DEFENDANT RELEASEES**

6 **5.1** In further consideration of the promises and agreements herein contained, and for the
7 payments to be made pursuant to Sections 3 and 4, Plaintiff, on behalf of himself, his past and
8 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
9 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
10 form of legal action and release all claims, including, without limitation, all actions, causes of
11 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
12 losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys’
13 fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively
14 “Claims”), against Settling Defendant and each of its distributors, wholesalers, licensors,
15 licensees, auctioneers, retailers (with the exception of J.C. Penney Company, Inc.), dealers,
16 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries and
17 their respective officers, directors, attorneys, representatives, shareholders, agents, and employees
18 (collectively, “Defendant Releasees”) arising under Proposition 65, Business & Professions Code
19 § 17200 *et seq.* and Business & Professions Code § 17500 *et seq.*, related to the Settling
20 Defendant’s or Defendant Releasees’ alleged failure to warn about exposures to or identification
21 of Listed Chemicals contained in the Products.

22 **5.2** The Parties further agree and acknowledge that this Consent Judgment is a full, final,
23 and binding resolution of any violation of Proposition 65, Business & Professions Code §§ 17200
24 *et seq.* and Business & Professions Code §§ 17500 *et seq.*, that have been or could have been
25 asserted in the Complaint against Settling Defendant for its alleged failure to provide clear and
26 reasonable warnings of exposure to or identification of Listed Chemicals in the Products.

1 5.3 In addition, Plaintiff, on behalf of himself, his attorneys, and his agents, waives all
2 rights to institute or participate in, directly or indirectly, any form of legal action and releases all
3 Claims against the Defendant Releasees arising under Proposition 65, Business & Professions
4 Code §§ 17200 *et seq.* and Business & Professions Code §§ 17500 *et seq.*, related to each of the
5 Defendant Releasees' alleged failures to warn about exposures to or identification of Listed
6 Chemicals contained in the Products and for all actions or statements made by Settling Defendant
7 or its attorneys or representatives, in the course of responding to alleged violations of
8 Proposition 65, Business & Professions Code §§ 17200 or Business & Professions Code
9 §§ 17500 by Settling Defendant. Provided however, Plaintiff shall remain free to institute any
10 form of legal action to enforce the provisions of this Consent Judgment.

11 5.4 It is specifically understood and agreed that the Parties intend that Settling
12 Defendant's compliance with the terms of this Consent Judgment resolves all issues and liability,
13 now and in the future (so long as Settling Defendant complies with the terms of the Consent
14 Judgment) concerning the Settling Defendant and its Defendant Releasees' compliance with the
15 requirements of Proposition 65, Business and Professions Code §§ 17200 *et seq.* and Business &
16 Professions Code §§ 17500 *et seq.*, as to the Listed Chemicals in the Products.

17 5.5 The releases provided by Plaintiff in this section shall not extend upstream to the
18 Product manufacturers or to J.C. Penney Company, Inc.

19 **6. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and
21 shall be null and void if, for any reason, it is not approved and entered by the Court within one
22 year after it has been fully executed by all Parties, in which event any monies that have been
23 provided to Plaintiff or his counsel pursuant to Sections 3 and 4 above, shall be refunded within
24 fifteen (15) days.

25 **7. SEVERABILITY**

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

1 **8. ATTORNEYS' FEES**

2 In the event that a dispute arises with respect to any provision(s) of this Consent
3 Judgment, the prevailing party shall, except as otherwise provided herein, be entitled to recover
4 reasonable and necessary costs and reasonable attorneys' fees incurred from the resolution of
5 such dispute.

6 **9. NOTICES**

7 All correspondence and notices required to be provided pursuant to this Consent Judgment
8 shall be in writing and personally delivered or sent by: (i) first-class, registered, certified mail,
9 return receipt requested or (ii) overnight courier on any Party by the other at the addresses listed
10 below. Any Party, from time to time, may specify a change of address to which all notices and
11 other communications shall be sent.

12 For Plaintiff:

13 Clifford A. Chanler
14 Chanler Law Group
15 655 Redwood Hwy., Suite 216
16 Mill Valley, CA 94941

16 For Defendant:

17 Andy Santulli
18 36 Vanderbilt Avenue
19 Pleasantville, NY 10570

19 With a copy to:

20 Jeffrey B. Margulies
21 Fulbright & Jaworski L.L.P.
22 865 S. Figueroa Street, 29th Floor
23 Los Angeles, CA90017

23 **10. NO ADMISSIONS.**

24 Nothing in this Consent Judgment shall constitute or be construed as an admission by
25 Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall
26 compliance with this Consent Judgment constitute or be construed as an admission by Settling
27 Defendant of any fact, finding, conclusion, issue of issue of law, or violation of law, such being
28 specifically denied by Settling Defendant. Settling Defendant reserves all of its rights and

1 defenses with regard to any claim by any party under Proposition 65 or otherwise. However, this
2 Section shall not diminish or otherwise affect the Settling Defendant's obligations,
3 responsibilities and duties under this Consent Judgment.

4 **11. GOVERNING LAW**

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

10 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

14 **13. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

15 Plaintiff agrees to comply with the reporting form requirements referenced in Health &
16 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall
17 present this Consent Judgment to the California Attorney General's Office within two (2) days
18 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment
19 will then be served on the Attorney General's Office at least forty-five (45) days prior to the date
20 a hearing is scheduled on such motion in the Superior Court for the City and County of San
21 Francisco unless the Court allows a shorter period of time.

22 **16. ADDITIONAL POST EXECUTION ACTIVITIES**

23 The Parties shall mutually employ their best efforts to support the entry of this Agreement
24 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
25 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
26 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
27 agree to file a *Joint Motion to Approve the Agreement* ("Joint Motion"), the first draft of which
28

1 Settling Defendant shall prepare, within a reasonable period of time after the Execution Date (i.e.,
2 not to exceed fourteen (14) days unless otherwise agreed to by Plaintiff's counsel based on
3 unanticipated circumstances). Plaintiff's counsel shall prepare a declaration in support of the
4 Joint Motion which shall, *inter alia*, set forth support for the fees and costs to be reimbursed
5 pursuant to Section 4. Settling Defendant shall have no additional responsibility to Plaintiff's
6 counsel pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and
7 costs incurred with respect to the preparation and filing of the Joint Motion and its supporting
8 declaration or with regard to Plaintiff's counsel appearing for a hearing or related proceedings
9 thereon.

10 **17. MODIFICATION**

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

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

5 **AGREED TO:**

6
7 DATE: _____

8
9 _____
10 Plaintiff Michael DiPirro

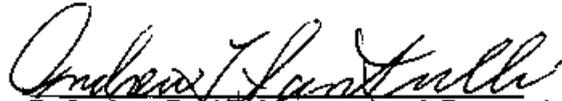
11 **APPROVED AS TO FORM:**

12 DATE: _____

13
14 Clifford Chanler
15 Chanler Law Group
16 Attorneys for Plaintiff Michael DiPirro

AGREED TO:

7 DATE: 8/18/04

8
9 
10 Defendant Certified International Corporation

APPROVED AS TO FORM:

DATE: _____

13
14 Jeffrey B. Margulies
15 Fulbright & Jaworski L.L.P.
16 Attorneys for Defendant Certified International
17 Corporation

1 **18. AUTHORIZATION**

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

5 **AGREED TO:**

AGREED TO:

6
7 DATE: _____

DATE: _____

8
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10 _____
Plaintiff Michael DiPirro

Defendant Certified International Corporation

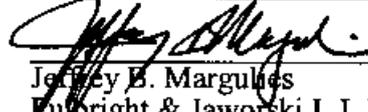
11 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

12 DATE: _____

DATE: 8/18/04

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14 _____
Clifford Chanler
Chanler Law Group
15 Attorneys for Plaintiff Michael DiPirro



Jeffrey B. Margulies
Fulbright & Jaworski L.L.P.
Attorneys for Defendant Certified International
Corporation

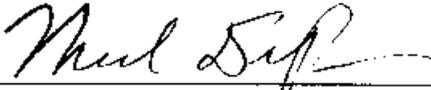
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3 respective Parties and have read, understood and agree to all of the terms and conditions of this
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5 **AGREED TO:**

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7 DATE: 8/27/04

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10 Plaintiff Michael DiPirro

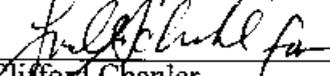
AGREED TO:

DATE: _____

Defendant Certified International Corporation

11 **APPROVED AS TO FORM:**

12 DATE: 8/30/04

13 
14 Clifford Chanler
Chanler Law Group
15 Attorneys for Plaintiff Michael DiPirro

APPROVED AS TO FORM:

DATE: _____

Jeffrey B. Margulies
Fulbright & Jaworski L.L.P.
Attorneys for Defendant Certified International
Corporation

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TEST PROTOCOL FOR LEAD RELEASE

Externally Decorated Glassware
Externally Decorated Ceramic Mugs

Decorated Glassware:

1. Wash glass and dry.
2. Totally immerse glass in beaker of acetic acid for 24 hours.
3. Measure ppm lead in acid, compare to internal volume of glass.
4. This procedure is attached.

Ceramic Mugs: Use the ASTM C 738-81 test modified for total immersion and comparison to internal volume.

Lip and Rim Testing: Not done as such. Since all drinking vessels are totally immersed, the lip and rim area is tested as a part of the whole.

Samples:

Six samples of each article, i.e., six randomly selected samples of each type decorated sample article. If a manufacturer wishes to distribute multiple different designs, six sample articles of each design should be submitted for testing. Six sample articles of each type design will be subjected to total immersion in acetic acid only.

Reagents:

1. Deionized or distilled deionized water.
2. Acetic acid 4% solution by volume; 1 volume of glacial acetic acid to 24 volumes of distilled deionized water.

Sample Preparation:

Thoroughly cleanse each sample to be tested by immersing in a detergent rinse of a suitable household alkaline detergent. Rinse several times with deionized water followed by several rinses with distilled deionized water. Place the sample articles in a clean aluminum basket, (covered with clean paper towels), or suitable clean rack and allow to air dry. Reduce contamination to a Minimum at all times.

Procedure for Leaching Lead, (4% Acetic Acid Solution):

Once all the samples have been properly immersed in a suitable household alkaline detergent, subjected to proper rinses and air dried, place each sample individually into an appropriately sized acid cleaned, (lead free), glass beaker or clean Nalgene plastic beaker. Using prenumbered labels, label the outside of each beaker containing a sample and record this number on the worksheet. Add 4% acetic acid to each beaker containing a sample, filling the sample and the space between the sample and the beaker while covering the rim of the sample with the acetic acid solution. Record the volume of leaching solution used in milliliters next to the sample number on the worksheet. (Cover each beaker completely with aluminum foil to shield the contents from light.) Record the time and allow the beakers to remain undisturbed for a period of 24 hours at 20 to 24° C (68 to 75° F). At the end of the 24 hour period mix the contents of each beaker well. To avoid contamination, wear disposable gloves and working with

one beaker at a time, lift up the sample and pour the contents of the sample into the respective beaker. Using a clean disposable plastic pipet, swirl the contents of the beaker to properly mix the contents, drain the pipet into the solution and draw off an aliquot of sample and place it into corresponding specifically numbered clean plastic snap cap test tube. The number on the outside of the beaker and the number on the test tube should correspond. Once the aliquot of sample has been drawn off, rinse the sample under running water, dry the bottom of the sample with a paper towel and transfer the prenumbered label from the outside of the respective beaker to the bottom of the sample.

Testing:

Perform testing for lead using atomic absorption spectrophotometry as prescribed in ASTM methodology C 738-81 or C 927-80. Run each sample in duplicate along with appropriate standards as well as aliquots of 4% acetic acid solution and distilled deionized water in plastic test tubes. Correct for the blank if necessary. If a sample of unknown goes off scale make necessary dilutions using 4% acetic acid from the same batch prepared for leaching. Record results in ppm using the following calculations:

$\text{ug/dl} \times \text{dilution} = \text{ug/dl} \div 100 = \text{ug/ml Pb} \times \text{volume of leaching solution used (ml)} =$

$\text{Total ug/Pb} \div \text{internal volume of the article to 7 mm(ml)} = \text{ppm leachable lead}$

relative to the internal volume.

See attached laboratory report forms.

To Determine The Internal Volume:

Mark each unit 7 mm (1/4") below the rim on the outside of the sample. Fill each unit from a graduated cylinder to approximately 1/4" (6 to 7 mm) of overflowing. Measure and record the internal volume of each unit in milliliters.

When Reporting Final Results Include The Following:

1. The amount of leachable lead in ppm relative to the internal volume of the sample, average of six if possible.
2. The distance of decoration below the rim in mm.

Materials Used In Testing Procedure:

Beakers - Nalgene, polypropylene, graduated 2000 ml.

Test tubes - Polystyrene with friction fit snap cap, sterile, 17x100mm

Pipets - Kimble, serological, polystyrene, sterile, 10 ml.x 1/10.

Carboys - Nalgene, 20 liter, for mixing acetic acid solution.

Aluminum Baskets

Utility bath - 18-8 stainless steel, deep drawn, seamless construction with cover; holds 31 quarts. Overall dimensions length 21 3/4", width 13 3/4", depth 8".

Utility bath - same as above, holds 20 quarts.

Gloves - vinyl, disposable.

Hot plate - VWR Scientific, Thermolyne, Type 2200, length 24", width 12"

Aluminum foil - to cover samples during the 24 hour period.

References:

1982 Annual Book Of ASTM Standards, Part 17, Refractories, Glass, Ceramic Materials;
Carbon and Graphite Products:

pg. 757-759 ASTM Designation: C 738-81

pg. 999-1002 ASTM Designation: C 927-80

pg. 682 ASTM Designation: C 676-74 (reapproved 1980)

Lead and Cadmium in Decorated Glass Tumblers - Interagency Task Force Report,
November 13, 1978.

Children's Glasses

Glasses intended or marketed primarily for use by children shall mean the following glass tumblers with colored designs decorated on the exterior surface of the glasses and used for holding non-alcoholic beverages, and other glasses analogous thereto:

- 1- Glass tumblers decorated with designs such as the following: Big Bird, Winnie the Pooh, Tweedy, Taz and Teletubbies.
- 2- Glass tumblers intended to be used primarily by small children for consuming non-alcoholic beverages which glass tumblers (a) have a height of at least three inches tall but not more than four and one-half inches tall and are not more than three inches width in diameter and (b) have a capacity to hold at least four ounces of liquid but not more than seven ounces of liquid.



Designation: C 927 - 80 (Reapproved 1999)

Standard Test Method for Lead and Cadmium Extracted from the Lip and Rim Area of Glass Tumblers Externally Decorated with Ceramic Glass Enamels¹

This standard is issued under the fixed designation C 927; the number immediately following the designation indicates the year of original adoption or, in the case of revision, the year of last revision. A number in parentheses indicates the year of last approval. A superscript epsilon (ϵ) indicates an editorial change since the last revision or approval.

1. Scope

1.1 This test method covers the determination of lead and cadmium extracted by acetic acid from the lip and rim area of glassware used for drinking and which is exteriorly decorated with ceramic glass enamel(s). The procedure of extraction may be expected to accelerate the release of lead and cadmium from the decorated area and to serve, therefore, as a severe test that is unlikely to be matched under the actual conditions of usage of such glassware. This test method is specific for lead and cadmium.

Note 1—For additional information see Test Method C 738.

1.2 The values stated in acceptable metric units are to be regarded as the standard. The values given in parentheses are for information only.

1.3 *This standard may involve hazardous materials, operations, and equipment. This standard does not purport to address all of the safety concerns associated with its use. It is the responsibility of the user of this standard to establish appropriate safety and health practices and determine the applicability of regulatory limitations prior to use.*

2. Referenced Documents

- 2.1 *ASTM Standards:*
C 738 Test Method for Lead and Cadmium Extracted from Glazed Ceramic Surfaces²

3. Terminology

3.1 Definitions:

3.1.1 *ceramic glass decorations*—ceramic glass enamels fused to glassware at temperatures above 425°C (800°F) to produce a decoration.

3.1.2 *ceramic glass enamels (also ceramic enamels or glass enamels)*—predominately colored, silicate glass fluxes used to decorate glassware.

¹ This test method is under the jurisdiction of ASTM Committee C-14 on Glass and Glass Products and is the direct responsibility of Subcommittee C14.10 on Glass Decoration. It was developed jointly by ASTM Committee C-14 and C-21 on Ceramic Whitewares and Related Products, the Society of Glass Decorators A-20 Subcommittee on Ceramic Enamels Decorated Glass Tumblers, and an Interagency Task Force consisting of FDA, EPA, and CPSC of the U.S. Government. Current edition approved Jan. 25, 1980. Published April 1980. Originally published as C 927 - 80. Last previous edition C 927 - 80 (1993)¹.

² *Annual Book of ASTM Standards*, Vol. 15.02.

3.1.3 *lip and rim area*—that part of a drinking vessel which extends 20 mm below the rim on the outside of the specimen.

4. Summary of Test Method

4.1 Lead and cadmium are extracted from the lip and rim area of the article under test by leaching with a 4% acetic acid solution at 20 to 24°C (68 to 75°F) for 24 h and are measured by atomic absorption spectrophotometry using specific hollow cathode or electrodeless discharge lamps for lead and cadmium respectively. Results are reported as micrograms per millilitre (ppm) extracted relative to the internal volume of the glass article.

5. Significance and Use

5.1 The heavy metals, lead and cadmium, are known to cause serious health effects in man if consumed in excess. It is, therefore, important to measure the amount that may be extracted from an area of the glass drinking vessel in contact with the lip. Even though the amount of lead and cadmium extracted by this test method is in no way representative of the amount of the metals extracted by actual lip contact, the relative magnitude of metals extracted from one test specimen in relation to another test specimen provides an effective tool for discrimination.

6. Interferences

6.1 Since specific hollow cathode lamps or electrodeless discharge lamps for lead and cadmium are used there are no interferences.

7. Apparatus

7.1 *Atomic Absorption Spectrophotometer (AAS)*, equipped with a 102-mm (4-in.) single slot or Baling burner head and digital concentration readout attachment (DCF) if available. This instrument should have a sensitivity of about 0.5 µg/mL of lead for 1% absorption and a sensitivity of about 0.025 µg/mL of cadmium for 1% absorption. Use the operating conditions as specified in the instrument manufacturer's analytical methods manual.

7.2 *Hollow Cathode or Electrodeless Discharge Lead Lamp*, set at 283.3 nm.

7.3 *Hollow Cathode or Electrodeless Discharge Cadmium Lamp*, set at 228.8 nm.

 C 927

7.4 *Glassware* of chemically resistant borosilicate glass for use in preparing and storing reagents and solutions, and for use as test specimen containers.

7.5 Detection limits of lead and cadmium shall be determined and reported for individual instruments. In this test method, the detection limit shall be defined as twice the mean noise level at 0 µg/mL. Representative detection limits would be approximately 0.01 to 0.03 µg/mL for lead and 0.0005 to 0.0010 µg/mL for cadmium.

8. Reagents

8.1 *Purity of Reagents*—Reagent grade chemicals shall be used in all tests. Unless otherwise indicated, it is intended that all reagents shall conform to the specifications of the Committee on Analytical Reagents of the American Chemical Society, where such specifications are available.³ Other grades may be used provided it is first ascertained that the reagent is of sufficiently high purity to permit its use without lessening the accuracy of the determination. Analyze each new batch of reagents for lead and cadmium.

8.2 *Purity of Water*—Unless otherwise indicated, references to water shall be understood to mean distilled or deionized water.

8.3 *Acetic Acid (4 volume %)*—Mix 1 volume of glacial acetic acid with 24 volumes of water.

8.4 *Cadmium Standard Stock Solution (1000 µg/mL of cadmium)*—Dissolve 0.9273 g of anhydrous cadmium sulfate in 250 mL of 1 % HCl (8.6) and dilute to 500 mL with 1 % HCl. Commercially available standard cadmium solutions may also be used.

8.5 *Detergent Rinse*—Add 2 mL of hand dishwashing detergent to 1 L of lukewarm tap water.

8.6 *Hydrochloric Acid (1 weight %)*—Mix 1 volume of concentrated hydrochloric acid (HCl, sp gr 1.19) with 37 volumes of water.

8.7 *Lead Standard Stock Solution (1000 µg/mL)*—Dissolve 1.598 g of lead nitrate (Pb(NO₃)₂) in 4 % acetic acid and dilute to 1 L with 4 % acetic acid. Commercially available standard lead solutions may also be used.

9. Sampling

9.1 *Continuous Process*—Since the amount of metal released from a decoration can be affected by the firing conditions, which may not be uniform across the width of thelehr, a minimum of six samples should be taken representing both sides and the center of the lehr.

9.2 *Load or Pile*—A minimum of six samples should be randomly selected from throughout the load.

10. Preparation of Standards

10.1 *Lead Standard Working Solutions*—Dilute lead nitrate solution (8.7) with acetic acid (8.3) to obtain working standards having final lead concentrations of 0, 5, 10, 15, and 20 µg/mL.

³ *Reagent Chemicals, American Chemical Society Specifications, American Chemical Society, Washington, DC. For suggestions on the testing of reagents not listed by the American Chemical Society, see *Annual Standards for Laboratory Chemicals*, BDH Ltd., Poole, Dorset, U.K., and the *United States Pharmacopeia and National Formulary*, U.S. Pharmacopoeial Convention, Inc. (USPC), Rockville, MD.*

10.2 *Cadmium Standard Working Solutions*—Dilute cadmium stock solution (8.4) with acetic acid (8.3) to obtain working standards having final cadmium concentrations of 0.0, 0.3, 0.5, 1, 1.5, and 2.0 µg/mL.

10.3 Fresh working solutions should be prepared daily.

11. Procedure

11.1 *Preparation of Sample*—Take six identical units and cleanse each with a detergent rinse. Then rinse with tap water followed by distilled water followed by air drying. Mark each unit 7 mm below the rim. Record the internal volume of each article in millilitres by filling from a graduated cylinder to approximately 6 to 7 mm (¼ in.) of overflowing. 20 mm below the rim, in a nondecorated area (if possible), 20 mm below the rim on the outside. Invert the article in an appropriate laboratory glassware container whose diameter is a minimum of 1.25 times and a maximum of 2.0 times the diameter of the test specimen at the rim. Carefully add 4 % acetic acid leaching solution from a graduated cylinder to the 20-mm mark. Record the volume of solution used. Cover the glassware containers, if possible, to prevent evaporation and to protect them from contamination. Let stand for 24 h at room temperature (20 to 24°C) in the dark. Remove the article after the 24-h leaching period and determine the lead and cadmium by atomic absorption. Record the lead and cadmium found in micrograms per millilitre.

NOTE 2—The possibility of a significant amount of evaporation exists. The analyst should determine whether the acetic acid leaching is noticeably below the 20-mm mark before removing the article. If it is, sufficient acetic acid solution should be added to restore the leaching solution to the 20-mm mark.

11.2 *Determination of Lead*—Set the instrument (7.1) for maximum signal at 283.3 nm using the lead hollow cathode lamp (7.2) (Note 3) and air/acetylene (C₂H₂) flow rates recommended by the manufacturer. Stir the sample (leaching) solution and pour off a portion into a clean flask or aspirate from the extraction container if suitable. Flush the burner with water and check zero point between readings. Determine lead from a standard curve of absorbance against µg/mL of lead or calibrate the direct concentration reading (DCR) unit in the concentration mode with lead working solutions (11.1) and read and record the sample concentration directly. Bracket the sample solution with the next higher and lower working solutions. Dilute samples containing more than 20 µg/mL of lead with 4 % acetic acid and reanalyze.

NOTE 3—Electrodeless discharge lamps may be substituted for hollow cathode lamps.

11.3 *Determination of Cadmium*—Proceed as in 11.2 using the cadmium hollow cathode lamp (7.3) and cadmium standards (10.2). If the sample (leaching) solution contains more than 2 µg/mL of cadmium, dilute with 4 % acetic acid and reanalyze.

12. Calculation

12.1 Use the following equations to calculate the total amount of lead or cadmium metal released from the lip and rim area of the article expressed (1) in total micrograms and (2) parts per million of lead or cadmium metal leached relative to the internal volume of the article.

C 927

12.1.1 Determine lead or cadmium, *A*, in micrograms as follows:

$$A = C \times V_1 \quad (1)$$

12.1.2 Determine lead or cadmium, *A*, in parts per million as follows:

$$A = \frac{C \times V_1}{V_2} \quad (2)$$

where:

- C* = concentration of lead or cadmium in leaching solution, µg/mL;
- V*₁ = volume of leaching solution, mL; and
- V*₂ = internal volume of article, mL. (Note 4).

Note 4—The internal volume of the article expressed in millilitres of water closely approximates its weight in grams. Therefore, in this instance microgram per millilitre equals micrograms per gram which equals parts per million.

13. Report

13.1 A suggested report form is given in Fig. 1.

14. Precision and Bias

14.1 Precision for the analytical method for single or multiple operator within a single laboratory is within the sensitivity of the AAS used and as specified is about 0.5 µg/mL for lead and 0.25 µg/mL for cadmium.

14.2 The accuracy and between-laboratory precision are dependent upon the ability to obtain representative samples for the statistical universe being sampled.

15. Keywords

15.1 atomic absorption; cadmium; ceramic glas; enamels; glaze; heavy metals; lead

LABORATORY TEST DATA

Lead and Cadmium Released from Lip and Rim Area of Drinking Glassware Decorated Externally with Ceramic Glass Enamels

Date			Laboratory		
Manufacturer			Reagent Blank Lead		
Pattern			Cadmium		
Detection Limit Lead					
Cadmium					
Internal Volume, mL					

Sample	Volume of Leaching Solution, mL	Concentration, µg/mL Lead	Total µg	ppm Relative to Internal Volume
1				
2				
3				
4				
5				
6				
Avg				
		Cadmium		
1				
2				
3				
4				
5				
6				
Avg				

FIG. 1 Report Form

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12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO

15 WHITNEY R. LEEMAN, PH.D.,
16 Plaintiff,
17 v.
18 ARC INTERNATIONAL NORTH AMERICA,
19 et al.
20 Defendants.

21 _____
22 AND CONSOLIDATED ACTIONS
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FILED
San Francisco County Superior Court
JUL 18 2005
GORDON PARK, LI, Clerk
BY: *[Signature]* Deputy Clerk

Case No. CGC-03-418025
(Consolidated with Case Nos. 418030, 418031,
418033, 418034, 418036, 418037, 418039,
418040, 418041, 418042, 418044, 418045 and
419705)

Assigned For All Purposes To The
Honorable Judge James McBride, Dept.
501

**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AGREEMENT**

Hearing: July 18, 2005
Time: 9:30 a.m.
Dept.: 501
Judge: Hon. James J. McBride

Action Filed: March 5, 2003

1 In the above-entitled action, Plaintiff Michael Dipirro and Defendant Certified
2 International Corporation, having agreed through their respective counsel that judgment be
3 entered pursuant to the terms of the Consent Judgment entered into by the Parties; and, and after
4 issuing an Order Approving Proposition 65 Settlement Agreement on July 18, 2004.

- 5 1. Beginning on January 1, 2005, Defendants have agreed not to sell Products within
6 the State of California that contain lead, which is an exception to the warning
7 request under Cal. Health & Safety Code, § 25249(e) and Cal. Health & Safety
8 Code, §25249.7(f)(4)(A);
- 9 2. The reimbursement of fees and costs to be paid pursuant to the parties' Consent
10 Judgment is reasonable under California law; and
- 11 3. The payment in lieu of civil penalty amount to be paid pursuant to the parties'
12 Consent Judgment is reasonable.

13 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code
14 of Civil Procedure section 664.5, judgment is entered in accordance with the terms of the Order
15 Approving Proposition 65 Settlement Agreement re: Consent Judgment, between the Parties.

16 IT IS SO ORDERED.

17 Dated: 7/18, 2005

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19 Judge of the Superior Court
20 JAMES J. McBRIDE
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