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## Settlement Agreement

This Settlement Agreement ("Agreement") is entered into by and between plaintiff Whitney R. Leeman, Ph.D. ("Dr. Leeman") and defendant Catamount Glassware ("Catamount") on January 12, 2004 (the "Effective Date"). Dr. Leeman and Catamount are collectively referred to herein as the "Parties" and hereby agree to the following terms and conditions:

**WHEREAS:**

A. Dr. Leeman is an individual residing in Sacramento, California, who seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products;

B. Catamount has sold glassware products to distributors and retailers with colored artwork, designs or markings on the exterior with materials that contain lead (or lead compounds) (the "Listed Chemicals"). Subsequent to the terms of this Agreement, Catamount represents that, in response to Dr. Leeman's investigation and enforcement activities, it no longer knowingly sells glassware products with colored artwork, designs or markings on the exterior with materials that contain the Listed Chemicals to any distributors or retailers in California;

C. On April 25, 2003, Dr. Leeman first served Catamount and other public enforcement agencies with a document entitled "60 Day Notice of Violation" which provided CATAMOUNT and such public enforcers with notice that Catamount was allegedly in violation of Health & Safety Code § 25249.6 for allegedly failing to warn purchasers that certain glassware products it sells in California expose users to one or more Listed Chemicals (the "Notice");

D. This Agreement resolves claims that are denied and disputed. The Parties intend this Agreement to be a full and final adjudication of all claims that were or could be asserted in this action based upon the matters alleged in the Notice as set forth herein. A description of the products which are covered by this Agreement is provided in the Notice, attached hereto as Exhibit A (the "Products"). Nothing in this Agreement shall be construed as an admission by

1 Catamount of any fact, finding, conclusion, issue of law, or violation of law; nor shall  
2 compliance with this Agreement constitute or be construed as an admission by Catamount of  
3 any fact, finding, conclusion, issue of law, or violation of law. However, this Paragraph shall  
4 not diminish or otherwise affect the obligations, responsibilities, and duties of the Parties under  
5 this Agreement.

6 **NOW THEREFORE, DR. LEEMAN AND CATAMOUNT HEREBY STIPULATE AND**  
7 **AGREE AS FOLLOWS:**

8 **1. Product Warnings.** Catamount agrees that it will not knowingly sell any  
9 Products containing the Listed Chemicals in the State of California unless such Products comply  
10 with Paragraphs 1.1 or 1.2 below:

11 **1.1** Beginning within thirty (30) days after the Effective Date, for all Products  
12 sold in California retail outlet stores, the following warning statement shall be attached to the  
13 Product or placed on the Products' packaging at or near their point of sale or display:

14 **"WARNING:** The materials used as colored decorations on the  
15 exterior of this glassware product contain lead, a  
16 chemical known to the State of California to  
17 cause birth defects or other reproductive harm."

18 The warning statement shall be prominently placed on each item and with such  
19 conspicuousness as compared with other words, statements, designs, or devices as to render it  
20 likely to be read and understood by an ordinary individual under customary conditions of  
21 purchase. An acceptable example of an appropriate warning sticker or label is attached hereto  
22 and depicted on Exhibit B.

23 **1.2** The warnings required pursuant to Paragraphs 1 and 1.1 above shall not be  
24 required for Products which:

- 25 **(a)** if the painted decoration is solely on the exterior of the Product exclusive of the top 20  
26 millimeters of the ware (i.e., below the exterior portion of the lip and rim area as defined  
27 by American Society of Testing and Materials Standard Test Method C927-99,  
28 hereinafter the "Lip and Rim Area"), produce either a nondetectable test result or a test

1 result no higher than 1.0 micrograms (ug) of lead (depending on whether flame AAS  
2 with a level of quantification of at least 100 parts per billion or graphite furnace AAS is  
3 applied for the analysis, respectively; however, CATAMOUNT may only utilize flame  
4 AAS to meet the foregoing requirement if it is not commercially reasonable for it to use  
5 graphite furnace AAS) using a Ghost Wipe TM test applied on painted portions of the  
6 surface of the Product performed as outlined in NIOSH method no. 9100; or

7  
8 **(b)** if the painted decoration extends into the exterior Lip and Rim Area or the interior (food  
9 contact surface) of the Product, a test result acceptable under Subparagraph (a) above,  
10 and (1) a result of 0.5 micrograms/milliliter (ug/ml) of lead or less using ASTM method  
11 C 927-99 with respect to any decoration in the Lip and Rim Area and/or (2) a result of  
12 0.1 parts per million (ppm) of lead or less using AOAC/ASTM method 973.32 with  
13 respect to any decoration on the interior (food contact surface) if the Product is  
14 holloware or a result of 0.226 ppm of lead or less using AOAC/ASTM method 973.32  
15 with respect to any decoration on the interior (food contact surface) if the Product is  
16 flatware; or

17  
18 **(c)** utilize paints on all decorations containing four one hundredths of one percent (0.04%)  
19 lead by weight or less (as measured by a sample size of the paint measuring  
20 approximately 50-100 mg) and contain no painted decoration within any part of the  
21 interior (food contact surface) of the Product or in the Lip and Rim Area of the Product.

22  
23 Should any court enter a final judgment in a case brought by Dr. Leeman or the People  
24 involving glassware or drinkware products with decoration containing lead which sets forth  
25 standards defining when Proposition 65 warnings will or will not be required (“Alternative  
26 Standards”) or if the California Attorney General’s Office otherwise provides written  
27 endorsement (i.e., a writing that is circulated by the Attorney General that is not intended for the  
28 purpose of soliciting further input or comments) of Alternative Standards applicable to products

1 that are of the same general type and function as the Products, Catamount shall be entitled to  
2 seek a modification of this Agreement so as to be able to utilize and rely on such Alternative  
3 Standards in lieu of those set forth in Subparagraphs (a), (b), or (c) of this Paragraph; Dr.  
4 Leeman shall not unreasonably contest any proposed application to effectuate such a  
5 modification provided that the Products for which such a modification are sought are of the  
6 same general type and function as those to which the Alternative Standards apply. Products  
7 satisfying the conditions of this Paragraph are hereinafter referred to as "Reformulated  
8 Products."

9 **2. Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to Health  
10 & Safety Code § 25249.7(b), Catamount shall pay \$13,700 in civil penalties. This amount shall  
11 be paid, subject to the potential reduction specified below and according to the following  
12 schedule:

13 (a) \$3,200 shall be paid within five (5) calendar days of the Effective Date; and

14 (b) an additional \$10,500 shall be paid within ninety (90) days of the Effective Date if there  
15 has been no written certification provided to Dr. Leeman's counsel by Catamount  
pursuant to Paragraph 2.1(a).

16 The penalty payments specified above are, where applicable, to be made payable to  
17 "Sheffer & Chanler LLP In Trust For Whitney R. Leeman," and shall be apportioned by  
18 Dr. Leeman in accordance with Health & Safety Code § 25192, with 75% of these funds  
19 remitted to the State of California's Office of Environmental Health Hazard Assessment.

20 **2.1 Reformulation Options.** The Parties hereby agree that the total amount of civil  
21 penalties established in Paragraph 2 above shall be subject to the following reduction/waiver:

22 (a) the payment otherwise required by Paragraph 2(b) shall be waived in its entirety if,  
23 within five (5) days of the date that such payment would otherwise be due, Catamount  
24 provides written certification to Dr. Leeman's counsel that it has caused the Products to be  
redesigned or reformulated so that, pursuant to Section 1.2, no warning will be necessary on  
Products sold in California.

25 The Parties agree that Catamount's potential interest in selling Reformulated Products is to be  
26 accounted for in this paragraph and, since it is not a remedy provided for by law, the absence of  
27 Catamount previously selling Reformulated Products is not relevant to the establishment of a  
28 penalty amount pursuant to Paragraph 2 above.

1           **3. Reimbursement Of Attorneys' Fees And Costs.** The Parties acknowledge that  
2 Dr. Leeman and her counsel offered to resolve this dispute without reaching terms on the  
3 amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved  
4 after the material terms of the agreement had been settled. Catamount then expressed a desire to  
5 resolve the fee and cost issue shortly after the other settlement terms had been finalized. The  
6 Parties then attempted to (and did) reach an accord on the compensation due to Dr. Leeman and  
7 her counsel under the private attorney general doctrine codified at Code of Civil Procedure §  
8 1021.5 for all work performed through the Effective Date of the Agreement. Under the private  
9 attorney general doctrine codified at Code of Civil Procedure section 1021.5, Catamount shall  
10 reimburse Dr. Leeman and her counsel for fees and costs, incurred as a result of investigating,  
11 bringing this matter to Catamount's attention, litigating and negotiating a settlement in the  
12 public interest. Catamount shall pay Dr. Leeman and her counsel \$11,300 for all attorneys'  
13 fees, expert and investigation fees, and litigation costs incurred through the anticipated date that  
14 the approval of this Agreement has been reported to the California Attorney General's Office.  
15 Payments made under this Paragraph shall be made no later than five (5) days after the Effective  
16 Date. Payment should be made payable to "Sheffer & Chanler LLP."

17           **4. Dr. Leeman's Release Of Catamount.** Dr. Leeman, by this Agreement, on  
18 behalf of herself, her agents, representatives, attorneys, assigns and in the interest of the general  
19 public, waives all rights to institute or participate in, directly or indirectly, any form of legal  
20 action, and releases all claims, liabilities, obligations, losses, costs, expenses, fines and  
21 damages, against Catamount, its directors, officers, employees, parents, corporate affiliates  
22 (such as sister companies within the same corporate family), and the successors and assigns of  
23 any of them as well as its independent contractors, customers, distributors and retailers both  
24 known and unknown, whether under Proposition 65 or the Business & Profession Code § 17200  
25 et seq. or § 17500 et seq. based on the alleged failure to warn about exposure to the Listed  
26 Chemicals contained in any of the Products. Dr. Leeman, by this Agreement, on behalf of  
27 herself, her agents, representatives, attorneys, and assigns, also waives all rights to institute or  
28 participate in, directly or indirectly, any form of legal action, and releases all claims, liabilities,

1 obligations, losses, costs, expenses, fines and damages, against Catamount and its respective  
2 distributors, customers, retailers, directors, officers, employees, parents, corporate affiliates  
3 (such as sister companies within the same corporate family), and the successors and assigns of  
4 any of them, under Proposition 65 or the Business & Profession Code § 17200 et seq. or §  
5 17500 et seq. based on the alleged failure to warn about exposure to Listed Chemicals in  
6 association with the Products. The releases provided for by this Paragraph shall not extend to  
7 any manufacturer or licensee of the Products or other entities that supply one or more of the  
8 Products to Catamount.

9         The parties intend that compliance with this Agreement shall resolve any issue now, in  
10 the past, or in the future concerning the Products' past and present, and future (up to the date of  
11 compliance established in Paragraph 1, above, and in the future so long as Catamount complies  
12 with this Agreement) compliance with Proposition 65 as such compliance pertains to the  
13 Products at issue.

14         **5. Catamount's Release Of Dr. Leeman.** Catamount, by this Agreement, waives  
15 all rights to institute any form of legal action against Dr. Leeman and her attorneys or  
16 representatives, for all actions or statements made by Dr. Leeman, and her attorneys or  
17 representatives, in the course of seeking enforcement of Proposition 65 or California Business &  
18 Profession Code § 17200 or § 17500 against Catamount in this matter.

19         **6. Sales Data.** Catamount understands that the sales data provided to counsel for  
20 Dr. Leeman by Catamount was a material factor upon which Dr. Leeman has relied to determine  
21 the amount of payments made pursuant to Health & Safety Code § 25249.7(b) in this  
22 Agreement. To the best of Catamount's knowledge, the sales data provided accurately reflects  
23 sales of Catamount's Products in its own retail stores in California. In the event that Dr.  
24 Leeman discovers facts that demonstrate to a reasonable degree of certainty that the sales data  
25 Catamount has provided is materially inaccurate, the parties shall meet in a good-faith attempt  
26 to resolve the matter within ten (10) business days of Catamount's receipt of notice from Dr.  
27 Leeman of her intent to challenge the accuracy of the sales data. If this good-faith attempt fails  
28 to resolve Dr. Leeman's concerns, Dr. Leeman shall have the right to institute an enforcement

1 action against Catamount, for those additional Products, based upon existing 60 Day Notices of  
2 Violation served on Catamount. In such case, all applicable statutes of limitation shall be  
3 deemed tolled for the period between the Effective Date and the date Dr. Leeman notifies  
4 Catamount that she is instituting the action for the additional Products. Provided, however, that:  
5 (a) Dr. Leeman shall not have the option of exercising her rights under this Paragraph more than  
6 one year following the Effective Date; and (b) Catamount shall have no additional liability, and  
7 Dr. Leeman waives any claims that might otherwise be asserted, from the Effective Date until  
8 the date that Dr. Leeman provides notice under this Paragraph 6.0, so long as Catamount has  
9 complied with the requirements of Paragraph 1 for all of the Products, including those numbers  
10 of Products additionally discovered.

11 **7. Severability.** In the event that any of the provisions of this Agreement are held  
12 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
13 affected.

14 **8. Attorneys' Fees.** In the event that a dispute arises with respect to any provisions  
15 of this Agreement (including, but not limited to, disputes arising from the provisions in  
16 Paragraphs 2 and 3), the prevailing party shall be entitled to recover costs and reasonable  
17 attorneys' fees.

18 **9. Governing Law.** The terms of this Agreement shall be governed by the laws of  
19 the State of California and shall apply within the State of California.

20 **10. Notices.** All correspondence to Dr. Leeman shall be mailed to:

21 Clifford Chanler  
22 Sheffer & Chanler, LLP  
23 160 Sansome Street, 2nd Floor  
24 San Francisco, CA 94104-3706

24 All correspondence to Catamount shall be mailed to:

25 James J. Cormier, III  
26 Cormier & Cormier  
27 204 Union Street  
28 Bennington, VT 05201

**11. Compliance With Reporting Requirements (Health & Safety Code §25249.7(f)).** Dr. Leeman agrees to comply with the reporting form requirements referenced in

1 11 Cal. Code Regs. § 3000, et seq. Pursuant to the regulations promulgated under 11 Cal. Code  
2 Regs. § 3003, Dr. Leeman shall present this Agreement to the California Attorney General's  
3 Office within two (2) days after receiving all necessary signatures.

4 **12. Counterparts and Facsimile.** This Agreement may be executed in counterparts  
5 and facsimile, each of which shall be deemed an original, and all of which, when taken together,  
6 shall constitute one and the same document.

7 **13. Authorization.** The undersigned are authorized to execute this Agreement on  
8 behalf of their respective parties and have read, understood and agree to all of the terms and  
9 conditions of this Agreement.

10  
11 **AGREED TO:**

12 DATE: Jan. 12, 2004

13  
14 

15 Whitney R. Leeman, Ph.D.  
16 PLAINTIFF

**AGREED TO:**

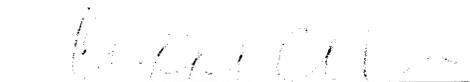
DATE: \_\_\_\_\_

17 \_\_\_\_\_  
18 Catamount Glassware  
19 DEFENDANT

20  
21 **APPROVED AS TO FORM:**

22 DATE: 1/12/04

23 SHEFFER & CHANLER LLP

24 

25 Clifford A. Chanler  
26 Attorneys for Plaintiff  
27 Whitney R. Leeman, Ph.D.

**APPROVED AS TO FORM:**

DATE: \_\_\_\_\_

CORMIER & CORMIER

28 \_\_\_\_\_  
James J. Cormier, III  
Attorneys for Defendant  
Catamount Glassware

1 11 Cal. Code Regs. § 3000, et seq. Pursuant to the regulations promulgated under 11 Cal. Code  
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7 **13. Authorization.** The undersigned are authorized to execute this Agreement on  
8 behalf of their respective parties and have read, understood and agree to all of the terms and  
9 conditions of this Agreement.

11 **AGREED TO:**

12 DATE: \_\_\_\_\_

14 \_\_\_\_\_  
15 Whitney R. Leeman, Ph.D.  
16 PLAINTIFF

17 **APPROVED AS TO FORM:**

18 DATE: \_\_\_\_\_

19 SHEFFER & CHANLER LLP

21 \_\_\_\_\_  
22 Clifford A. Chanler  
23 Attorneys for Plaintiff  
24 Whitney R. Leeman, Ph.D.

**AGREED TO:**

DATE: 1/6/04

\_\_\_\_\_  
Catamount Glassware  
DEFENDANT

**APPROVED AS TO FORM:**

DATE: 1/6/04

CORMIER & CORMIER

\_\_\_\_\_  
James J. Cormier, III  
Attorneys for Defendant  
Catamount Glassware

EXHIBIT A

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PRODUCTS:

Measuring Glasses and Other Glassware with Colored  
Artwork, Designs or Markings (containing lead) on  
the Exterior;

Specifically:

Liquid Dry Measuring Glass #193995  
Shaker Jars #3235380

EXHIBIT B

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**CALIFORNIA PROPOSITION 65 WARNING:**  
The decoration on the glass contains a chemical  
known to The State of California to cause cancer  
and birth defects or other reproductive harm.

**CALIFORNIA PROPOSITION 65 WARNING:**  
The decoration on the glass contains a chemical  
known to The State of California to cause cancer  
and birth defects or other reproductive harm.

1 Laralei C. Schmohl, State Bar No. 203319  
SHEFFER & CHANLER LLP  
2 160 Sansome Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94104-3706  
3 Tel.: (415) 434-9111  
Fax: (415) 434-9115

4 Attorneys for Plaintiffs  
5 MICHAEL DIPIRRO and  
WHITNEY R. LEEMAN, Ph.D.

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 IN AND FOR THE COUNTY OF SAN FRANCISCO  
9 UNLIMITED CIVIL JURISDICTION

10 WHITNEY R. LEEMAN, Ph.D., )

11 Plaintiff, )

12 v. )

13 ARC INTERNATIONAL NORTH )  
14 AMERICA INC.; C.C.A. INTERNATIONAL )  
15 INC.; SEARS ROEBUCK AND CO.; and )  
DOES 1 through 150, )

16 Defendants. )

No. CGC-03-418025  
(Consolidated with No. CGC-03-422636)

**PROOF OF SERVICE**

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1 I am employed in the County of San Francisco, State of California. I am a citizen of  
2 the United States, over the age of 18 years, and not a party to the within action. My  
3 business address is 160 Sansome Street, 2nd Floor, San Francisco, CA 94104.

4 On February 2, 2004, I served the following document(s), described as:

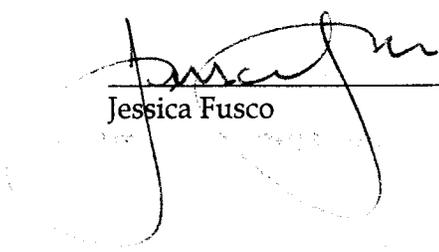
5 **REPORT OF SETTLEMENT**

6 on each interested party as follows:

7 Office of the California Attorney General	James J. Cormier, Jr., Esq.
Proposition 65 Enforcement Reporting	Cormier & Cormier
Attention: Prop 65 Coordinator	204 Union Street
1515 Clay Street, Suite 2000	P.O. Box 26
8 Oakland, CA 94612-0550	Bennington, VT 05201

9        (BY MAIL) I placed a true and correct copy of the foregoing document(s)  
10 in a sealed envelope addressed to each interested party as set forth above. I placed each  
11 such envelope, with postage thereon fully prepaid, for collection and mailing at the law  
12 firm of Sheffer & Chanler LLP, located in San Francisco, California. I am readily familiar  
13 with Sheffer & Chanler LLP's practice for collection and processing of documents for  
14 mailing with the United States Postal Service. Under that practice, the documents are  
15 deposited with the United States Postal Service on the same day in the ordinary course of  
16 business.

17 Executed this 2<sup>nd</sup> day of February, 2004, at San Francisco, California. I declare  
18 under the penalty of perjury under the laws of the State of California that the foregoing is  
19 true and correct.

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\_\_\_\_\_  
Jessica Fusco