

1 STEPHEN S. SAYAD (State Bar # 104866)
2 DANIEL BORNSTEIN (State Bar # 181711)
3 CLIFFORD A. CHANLER (State Bar #135534)
4 LARALEI C. SCHMOHL (State Bar # 203319)
5 CHANLER LAW GROUP
6 655 Redwood Highway, Suite 216
7 Mill Valley, California 94941
8 Tel: (415) 380-9222
9 Fax: (415) 380-9233

10 Attorneys for Plaintiff
11 Whitney R. Leeman, Ph.D.

ENDORSED
FILED
San Francisco County Superior Court

APR 28 2005

GORDON PARK-LI, Clerk
BY: S. PENG Deputy Clerk

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 IN AND FOR THE COUNTY OF SAN FRANCISCO
14 UNLIMITED CIVIL JURSDICTION

15 WHITNEY R. LEEMAN, PH.D, an individual)
16 Plaintiff,)
17 v.)
18 Z GALLERIE; and DOES 1 through 150,)
19 Defendants.)

No. CGC 04-429641

3 } [PROPOSED] JUDGMENT PURSUANT
TO TERMS OF CONSENT JUDGMENT

Date: April 28, 2005

Time: 9:30 am

Dept: 301

Judge: Hon. James L. Warren

1 In the above-entitled action, Plaintiff Whitney R. Leeman, Ph.D. and Defendant Z
2 Gallerie, having agreed through their respective counsel that judgment be entered pursuant to
3 the terms of the Consent Judgment entered into by the parties, and after issuing an Order
4 Approving Proposition 65 Settlement Agreement and Consent Judgment on April 28, 2005.

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code
6 of Civil Procedure section 664.5, judgment is entered in accordance with the terms of the
7 Order Approving Proposition 65 Settlement Agreement and Consent Judgment, between the
8 parties.

9 **IT IS SO ORDERED.**

10 Dated: .

11 APR 28 2005

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Hon. James L. Warren
JUDGE OF THE SUPERIOR COURT

1 STEPHEN S. SAYAD (State Bar # 104866)
2 DANIEL BORNSTEIN (State Bar # 181711)
3 CLIFFORD A. CHANLER (State Bar #135534)
4 LARALEI C. SCHMOHL (State Bar # 203319)
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8 Tel: (415) 380-9222
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10 Attorneys for Plaintiff
11 Whitney R. Leeman, Ph.D.

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
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11 WHITNEY R. LEEMAN, PH.D, an individual)
12 Plaintiff,)
13 v.)
14 Z GALLERIE; and DOES 1 through 150,)
15 Defendants.)
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No. CGC-04-429641

~~PROPOSED~~ ORDER PURSUANT TO
TERMS OF CONSENT JUDGMENT

Date: April 28, 2005
Time: 9:30 a.m.
Dept: 301
Judge: Hon. James L. Warren

1 In the above-entitled action, Plaintiff WHITNEY R. LEEMAN, Ph.D. and Defendant Z-
2 GALLERIE ("Settling Defendant"), having agreed through their respective counsel that judgment
3 be entered pursuant to the terms of the Consent Judgment entered into by the above-referenced
4 parties and attached hereto as **Exhibit A**; and after consideration of the papers submitted and the
5 arguments presented, the Court finds that the settlement agreement set out in the attached Consent
6 Judgment meets the criteria established by Senate Bill 471, in that:

- 7 1. The health hazard warning that is required by the Consent Judgment complies with
8 Health & Safety Code section 25249.7 (as amended by Senate Bill 471);
- 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 civil penalty amount to be paid pursuant to the parties' Consent Judgment is
12 reasonable,

13 IT IS HEREBY ORDERED that judgment be entered in this case, in accordance with the
14 terms of the Consent Judgment, attached hereto as **Exhibit A**.

15 IT IS SO ORDERED.

16 Dated:

17 APR 28 2005

JAMES L. WARREN

18 Hon. James L. Warren
19 JUDGE OF THE SUPERIOR COURT
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EXHIBIT A

1 Stephen S. Sayad, State Bar No. 104866
David D. Stein, State Bar No. 112074
2 Clifford A. Chanler, State Bar No. 135534
Laralei C. Schmohl, State Bar No. 203319
3 CHANLER LAW GROUP
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4 Mill Valley, CA 94941
Tel: (415) 380-9222
5 Fax: (415) 380-9223

6 Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D.

7
8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF SAN FRANCISCO
11 UNLIMITED CIVIL JURISDICTION

12 WHITNEY R. LEEMAN, Ph.D.,

13 Plaintiff,

14 vs.

15 Z GALLERIE; and DOES 1 through 150,

16 Defendants.
17

) Case No. CGC-04-429641

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

1 **1. INTRODUCTION**

2 **1.1 Plaintiff and Settling Defendant**

3 This Consent Judgment is entered into by and between plaintiff, Whitney R. Leeman,
4 Ph.D. (hereafter “Dr. Leeman” or “Leeman” or “Plaintiff”) and Z Gallerie (hereafter “Z Gallerie”
5 or “Settling Defendant”), with Plaintiff and Settling Defendant collectively referred to as the
6 “Parties” and individually referred to as a “Party.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendant**

12 Z Gallerie is a corporation that sells, among other things, tableware and glassware intended
13 to be used for the consumption of food and beverages by California citizens.

14 **1.4 General Allegations**

15 Plaintiff alleges that Settling Defendant has distributed and/or sold in the State of
16 California certain tableware (including glass containers) with colored artwork or designs which
17 contain lead on the exterior. Lead and lead compounds are listed pursuant to the Safe Drinking
18 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 et seq.
19 (“Proposition 65”), to cause cancer and birth defects. Lead and lead compounds shall be referred
20 to herein as the Listed Chemical.

21 **1.5 Products Descriptions**

22 A list of such Z Gallerie products that contain lead the Listed Chemical, and which are
23 covered by this Agreement, is provided in Exhibit A (all such Z Gallerie products to be
24 collectively referred to hereinafter as the “Products”);

25 **1.6 Notices of Violation**

26 On or about September 12, 2003, Dr. Leeman served Settling Defendant and various
27 public enforcement agencies with documents, entitled “60-Day Notice of Violation” (“Notice”)
28 that provided Settling Defendant and such public enforcers with notice that alleged that Settling

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

3 **1.7 Complaint**

4 On March 16, 2004, Dr. Leeman, in the interest of the general public in California, filed a
5 complaint (hereafter referred to as "Complaint" or the "Action") in the Superior Court for the City
6 and County of San Francisco against Settling Defendant alleging violations of Health & Safety
7 Code § 25249.6 based on the alleged exposures to the Listed Chemical contained in the Products
8 sold by Settling Defendant.

9 **1.8 No Admission**

10 Settling Defendant denies the material factual and legal allegations contained in Plaintiff's
11 Notice and Complaint and maintains that all products that it has sold and distributed in California,
12 including the Products, have been and are in compliance with all laws. Nothing in this Consent
13 Judgment shall be construed as an admission by Settling Defendant or any Defendant Releasee (as
14 defined in Section 5) of any fact, finding, issue of law, or violation of law, nor shall compliance
15 with this Agreement constitute or be construed as an admission by Settling Defendant or any
16 Defendant Releasee of any fact, finding, conclusion, issue of law or violation of law, such being
17 specifically denied by Settling Defendant. Nothing in this Consent Judgment shall apply to, or be
18 used as evidence regarding compliance for, any product sold other than those identified in Exhibit
19 A by Settling Defendant or any Defendant Releasee with Proposition 65 or any other statute or
20 regulation. However, this section shall not diminish or otherwise affect the obligations,
21 responsibilities and duties of Settling Defendant under this Consent Judgment.

22 **1.9 Consent to Jurisdiction**

23 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
24 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction
25 over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the County
26 of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment and to
27 enforce the provisions thereof.

1 **1.10 Effective Date**

2 For purposes of this Consent Judgment, the term "Effective Date" shall mean October 13,
3 2004.

4 **2. INJUNCTIVE RELIEF**

5 **2.1** After December 31, 2004, Settling Defendant shall not sell or offer for sale in
6 California any of the Products containing the Listed Chemicals in the colored decorations unless
7 such Products comply with sections 2.2, 2.3 or 2.4, below.

8 **2.2 Product Warnings**

9 Subject to Section 2.3 after December 31, 2004, Settling Defendant shall not sell any of the
10 Products in its California stores unless warnings are provided as set forth below in subsection
11 2.2.i or 2.2.ii.

12 **2.2.i Warning on the Products or Product Packaging**

13 A warning is affixed to the packaging, labeling or directly to or on a Product by the
14 manufacturer, importer, or distributor of the Product, unless Z Gallerie consents, in writing, to
15 provide that warning itself, that states:

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

18 Warnings issued for Products pursuant to this subsection shall be prominently placed 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 use or
21 purchase. Any warnings given by in-store signage shall identify the specific Products at issue so
22 as to minimize, if not eliminate, the chances that an overwarning situation will arise.

23 **2.2.ii Point of Sale Warnings**

24 Z Gallerie may execute its warning obligations, where applicable, through the
25 posting of signs at retail outlets in the State of California at which Products are sold, in accordance
26 with the terms specified in subsections (a) and (b) below.
27
28

1 (a) Point of Sale warnings may be provided through one or more signs posted at or
2 near the point of sale or display of the Products that state:

3 **WARNING: The materials used as colored decorations on this product**
4 **contain lead, a chemical known to the State of California**
5 **to cause birth defects or other reproductive harm.**

6 (b) A Point of Sale warning provided pursuant to subsection (a) shall be prominently
7 placed with such conspicuousness as compared with other words, statements, designs or devices as
8 to render it likely to be read and understood by an ordinary individual under customary conditions
9 of use or purchase and shall be placed or written in a manner such that the consumer understands
10 to which specific Products the warnings apply so as to minimize, if not eliminate, the chances that
11 an overwarning situation will arise.

12 Subject to section 2.4, after December 31, 2004, Settling Defendant shall not sell or
13 distribute any of the Products by mail order catalog or the Internet to California residents, unless
14 warnings are provided as set forth below.

15 For Products that require a warning pursuant to this Consent Judgment and that are sold by
16 Settling Defendant by mail order or from the Internet to California residents, a warning containing
17 the language in subsection 2.2 shall be included, at Settling Defendant's sole option, either: (a) in
18 the mail order catalog (if any) or on the website (if any) pursuant to subsection 2.2.1 or 2.2.2; or
19 (b) with the Product when it is shipped to an address in California pursuant to subsection 2.2.3.
20 Any warnings given in the mail order catalogs or on the website shall identify the specific
21 Products so as to minimize, if not eliminate, the chances that an over warning situation will arise.
22 If Settling Defendant elects to provide warnings in the mail order catalog, then such warnings (at a
23 location designated in subsection 2.2.1) shall be included in any new galley prints of such catalogs
24 sent to the printer after this Consent Judgment is approved by the Court.

25 **2.2.1 Mail Order Catalog**

26 The Warning Message shall be stated within the catalog, either (a) on the inside
27 front cover of any catalog, (b) on the same page as any order form, or (c) on the same page as the
28 price, in the same type size as the surrounding, non-heading text, with the same language and

1 specifics as that appearing in subsection 2.2 so the reader can easily discern which specific pattern
2 the warning applies to.

3 **2.2.2 Internet Web Sites**

4 The warning text, or a link to a page containing the warning text, shall be displayed
5 either (a) on the same page on which a Product is displayed, (b) on the same page as any order
6 form for a Product, (c) on the same page as the price for any Product, (d) on one or more pages
7 displayed to a purchaser over the Internet or via electronic mail during the checkout and order
8 confirmation process for sale of a Product, or (e) in any manner such that is likely to be read and
9 understood by an ordinary individual under customary conditions of purchase of a Product,
10 including the same language as that appearing in subsection 2.2. If a link is used, it shall state
11 "Warning information for California residents," and shall be of a size equal to the size of other
12 links on the page.

13 **2.2.3 Package Insert or Label**

14 Alternatively, a warning may be provided with the Product when it is shipped
15 directly to a consumer in California, by (a) product labeling pursuant to subsection 2.2, above, (b)
16 inserting a card or slip of paper measuring at least 4" x 6" in the shipping carton, or (c) including
17 the warning on the packing slip or customer invoice identifying the Product in lettering of the
18 same size as the description of the Product. The warning shall include the language appearing in
19 subsection 2.2 and shall inform the consumer that he or she may return the product for a full
20 refund within thirty (30) days of receipt.

21 **2.3 Reformulated Products**

22 The Products shall be deemed to comply with Proposition 65 and be exempt from any
23 Proposition 65 warning requirements under Sections 2.1 through 2.2, if all designs applied to the
24 exterior surface of any Products that are reasonably likely to be sold in California which contain
25 less than 0.06% lead by weight in the decoration either before or after the decoration is applied to
26 the Product, using a test method of sufficient sensitivity to establish a limit of quantitation of less
27 than 600 parts per million (ppm), or if such Products were manufactured on or before December
28 31, 2004.

1 **2.4 Future Settlements or Standards**

2 Should any court of this state enter an order in a case brought by the People of the State of
3 California that sets forth the standards defining when Proposition 65 warnings will or will not be
4 required for products substantially similar to the type and function of Products at issue here
5 (“Alternative Standards”), or if the California Attorney General’s Office or Office of
6 Environmental Health Hazard Assessment (“OEHHA”) otherwise provide written endorsement
7 (i.e. a writing that is circulated by the Attorney General that is not intended for the purposes of
8 soliciting further input or comments) of Alternative Standards applicable to products that are of
9 the same type and function as the Products, Z Gallerie shall be entitled to seek a modification of
10 this Consent Judgment so as to enable it to utilize and rely on such Alternative Standards in lieu of
11 those set forth in subsection 2.3 above. Dr. Leeman shall not unreasonable withhold consent to
12 any proposed stipulation to effectuate such a modification.

13 **3. MONETARY PAYMENTS**

14 **3.1 Penalties Pursuant To Health & Safety Code §25249.7(b)**

15 Pursuant to Health & Safety Code section 25249.7(b), Settling Defendant shall pay
16 \$38,000 in civil penalties in two equal installments of \$19,000. The first penalty payment shall be
17 made not later than ten days following the execution of this agreement by both parties, and made
18 payable to “Chanler Law Group in Trust For Whitney R. Leeman.” The second payment of
19 \$19,000 shall be made on February 1, 2006; however, this payment shall be waived if Settling
20 Defendant certifies by January 10, 2006 that 50% or more of the Products it sold in California in
21 calendar year 2005 were Reformulated Products. Any such certification with respect to the
22 percentage of Reformulated Products sold shall specify the Product (by Product name, SKU or
23 UPC Code) and the number of units sold for each such Product. The certification shall be in
24 writing, signed by an executive and received by Dr. Leeman by January 15, 2006.

25 **3.2 Apportionment of Penalties Received**

26 All penalty monies received shall be apportioned by Plaintiff in accordance with Health &
27 Safety Code § 25192, with 75% of these funds remitted by Plaintiff to the State of California’s
28 Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty

1 monies retained by Plaintiff as provided by Health & Safety Code § 25249.12(d). Plaintiff shall
2 bear all responsibility for apportioning and paying to the State of California the appropriate civil
3 penalties paid in accordance with this Section.

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

5 The parties acknowledge that Dr. Leeman and her counsel offered to resolve this dispute
6 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
7 this fee issue to be resolved after the material terms of the agreement had been settled. Settling
8 Defendant then expressed a desire to resolve the fee and cost issue shortly after the other
9 settlement terms had been finalized. Shortly thereafter the Parties then reached an accord on the
10 compensation due to Plaintiff and its counsel under the private attorney general doctrine codified
11 at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date of the
12 Agreement. Under Code of Civil Procedure § 1021.5, Settling Defendant shall reimburse Plaintiff
13 and its counsel for fees and costs, incurred as a result of investigating, bringing this matter to
14 Settling Defendant's attention, litigating and negotiating a settlement in the public interest.
15 Settling Defendant shall pay Plaintiff and its counsel \$56,000 for all attorneys' fees, expert and
16 investigation fees, and litigation costs. The payment shall be delivered to Plaintiff's counsel at the
17 address set forth in Section 11, below, on or before October 31, 2004. Except as specifically
18 provided in this Consent Judgment, Settling Defendant shall have no further obligation with
19 regard to reimbursement of Plaintiff's attorney's fees and costs with regard to the Products
20 covered in these Actions.

21 **5. RELEASE OF ALL CLAIMS**

22 **5.1 Release of Settling Defendant**

23 In further consideration of the promises and agreements herein contained, and for the
24 payments to be made pursuant to Sections 3 and 4, Plaintiff, on behalf of herself, her past and
25 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
26 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
27 form of legal action and releases all claims, including, without limitation, all actions, causes of
28 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,

1 losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys'
2 fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively
3 "Claims"), against Settling Defendant and each of its vendors, licensors, licensees, auctioneers,
4 retailers, franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate
5 affiliates, subsidiaries and their respective officers, directors, attorneys, representatives,
6 shareholders, agents, and employees (collectively, "Defendant Releasees") arising under
7 Proposition 65, Business & Professions Code § 17200 et seq. and Business & Professions Code §
8 17500 et seq., related to Settling Defendant's or any Defendant Releasee's alleged failure to warn
9 about exposures to or identification of Listed Chemicals contained in the Products.

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

15 In addition, Plaintiff, on behalf of herself, her attorneys, and her agents, waives all rights to
16 institute or participate in, directly or indirectly, any form of legal action and releases all claims
17 against any Defendant Releasee arising under Proposition 65, Business & Professions Code §§
18 17200 et seq. and Business & Professions Code §§ 17500 et seq., related to any Defendant
19 Releasee's alleged failures to warn about exposures to or identification of Listed Chemicals
20 contained in the Products and for all actions or statements made by Settling Defendant or its
21 attorneys or representatives, in the course of responding to alleged violations of Proposition 65,
22 Business & Professions Code §§ 17200 or Business & Professions Code §§ 17500 by Settling
23 Defendant. Provided however, Plaintiff shall remain free to institute any form of legal action to
24 enforce the provisions of this Consent Judgment.

25 It is specifically understood and agreed that the Parties intend that Settling Defendant's
26 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in
27 the future (so long as Settling Defendant complies with the terms of the Consent Judgment)
28 concerning Settling Defendant and any Defendant Releasee's compliance with the requirements of

1 Proposition 65, Business and Professions Code §§ 17200 et seq. and Business & Professions Code
2 §§ 17500 et seq., as to the Listed Chemicals in the Products.

3 This release (Paragraph 5.1) specifically excludes any release of the Settling Defendant's
4 upstream vendors (i.e., those entities that supplied the Products to Settling Defendant).

5 **5.2 Settling Defendant's Release of Plaintiff**

6 It is specifically understood and agreed that the Parties intend that Settling Defendant's
7 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in
8 the future, (so long as Settling Defendant complies with the terms of the Consent Judgment)
9 concerning the Settling Defendant and an Defendant Releasees's compliance with the
10 requirements of Proposition 65, Business & Professions Code §§ 17200, et seq. and Business &
11 Professions Code §§ 17500, et seq., as to the Listed Chemicals in the Products.

12 Settling Defendant waives all rights to institute any form of legal action against Plaintiff,
13 her attorneys or representatives, for all actions taken or statements made by Plaintiff and her
14 attorneys or representatives, in the course of seeking enforcement of Proposition 65, Business &
15 Professions Code §§ 17200 et seq. or Business & Professions Code §§ 17500 et seq. in this
16 Action.

17 **6. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court and
19 shall be null and void if, for any reason, it is not approved and entered by the Court within one
20 year after it has been fully executed by all Parties, in which event any monies that have been
21 provided to Plaintiff or her counsel pursuant to Sections 5 or 6, above, shall be refunded within
22 fifteen (15) days of notice that the Court will not ultimately approve the Consent Judgment.

23 **7. SALES DATA**

24 Z Gallerie understands that the sales data provided to counsel for Leeman by Z Gallerie
25 was a material factor upon which Leeman has relied to determine the amount of payments made
26 pursuant to Health & Safety Code §25249.7(b) in this Agreement. To the best of Z Gallerie's
27 knowledge, the sales data provided is true and accurate. In the event that Leeman discovers facts
28 that demonstrate to a reasonable degree of certainty that the sales data is materially inaccurate, the

1 parties shall meet in a good faith attempt to resolve the matter within ten (10) days of Z Gallerie's
2 receipt of notice from Leeman of her intent to challenge the accuracy of the sales data. If this
3 good faith attempt fails to resolve Leeman's concerns, Leeman shall have the right to re-institute
4 an enforcement action against Z Gallerie, for those additional Products, based upon any existing
5 60 Day Notices of violation served on Z Gallerie. In such case, all applicable statutes of limitation
6 shall be deemed tolled for the period between the date Leeman filed the instant action and the date
7 Leeman notifies Z Gallerie that she is re-instituting the action for the additional Products.
8 Provided, however, that Z Gallerie shall have no additional liability, and Leeman waives any
9 claims that might otherwise be asserted, from the Effective Date until the date that Leeman
10 provides notice under this Paragraph 7, so long as Z Gallerie has complied with the requirements
11 of Section 1.0 for all of the Products.

12 **8. ENFORCEMENT OF CONSENT JUDGMENT WITH REGARD TO**
13 **RETAIL STORES IN CALIFORNIA**

14 **8.1** Before moving to enforce the terms and conditions of Section 2 of this Consent
15 Judgment against Z Gallerie with respect to an alleged violation occurring at a retail outlet
16 (defined below) located in California, Plaintiff and others must follow the procedures set forth in
17 Sections 8.2 and 8.4.

18 **8.2** In the event that Plaintiff and/or her attorneys, agents, assigns, or any other person
19 acting in the public interest under Health & Safety Code § 25249.7(d), (hereinafter "Notifying
20 Person") identify one or more retail stores in California operated by Z Gallerie or a Defendant
21 Releasee (hereinafter "retail outlet") at which Products are sold which do not meet the
22 requirements of this Consent Judgment, such Notifying Person shall notify, in writing, Z Gallerie
23 of such alleged failure to comply (the "Notice of Breach"). Within sixty (60) days of the date the
24 alleged violation was observed, a Notice of Breach shall be served by first class mail, with proof
25 of service, to the persons set forth in Section 12, below. The Notice of Breach shall identify the
26 date the alleged violation was observed and the retail outlet in question, and reasonably describe
27 the nature of the alleged violation with sufficient detail, to allow Z Gallerie to determine the basis
28

1 of the claim being asserted and the identified of the type of Products to which those assertions
2 apply, along with the name of the specific product alleged to violate this Agreement.

3 **8.3** In the event that the Notifying Party identifies a specific retail outlet, other than the
4 specific one identified in Section 8.2 of this Consent Judgment, selling other Products not
5 compliant with this Consent Judgment, such Notifying Person shall serve Z Gallerie with another
6 Notice of Breach in the manner and with the information required in section 8.2 and provide the
7 information required in Section 8.2.

8 **8.4** The Notifying Person shall take no further action against Z Gallerie or Defendant
9 Releasees unless the Notifying Person discovers, no less than thirty (30) days nor greater than six
10 (6) months after the service of the Notice of Breach served pursuant to Section 8.2 or 8.3, another
11 failure to comply with the type of Products previously identified by the Notifying Person whether
12 or not the alleged failure to comply is at the same retail outlet(s) identified in the Notices of
13 Breach served pursuant to Sections 8.2 and 8.3.

14 **9. SEVERABILITY**

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

18 **10. ATTORNEYS' FEES**

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

22 **11. GOVERNING LAW**

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

28

1 **12. NOTICES**

2 All correspondence and notices required to be provided pursuant to this Consent Judgment
3 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,
4 return receipt requested or (ii) overnight courier on any Party by the others at the following
5 addresses:

6 To Settling Defendant:

7 Carla J. Feldman
8 LOEB & LOEB LLP
9 10100 Santa Monica Boulevard, Suite 2200
10 Los Angeles, CA 90067-4164

11 To Plaintiff:

12 Clifford A. Chanler, Esq.
13 CHANLER LAW GROUP
14 655 Redwood Highway, Suite 216
15 Mill Valley, CA 94941

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

18 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

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

1 **15. ADDITIONAL POST EXECUTION ACTIVITIES**

2 The Parties shall mutually employ their best efforts to support the entry of this Agreement
3 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
4 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
5 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
6 agree to file a Joint Motion to Approve the Agreement (“Joint Motion”), the first draft of which
7 Settling Defendant shall prepare, within a reasonable period of time after the Execution Date (i.e.,
8 not to exceed fourteen (14) days unless otherwise agreed to by Plaintiff’s counsel based on
9 unanticipated circumstances). Plaintiff’s counsel shall prepare a declaration in support of the Joint
10 Motion which shall, inter alia, set forth support for the fees and costs to be reimbursed pursuant to
11 Section 6. Settling Defendant shall have no additional responsibility to Plaintiff’s counsel
12 pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and costs
13 incurred with respect to the preparation and filing of the Joint Motion and its supporting
14 declaration or with regard to Plaintiff’s counsel appearing for a hearing or related proceedings
15 thereon.

16 **16. MODIFICATION**

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

22 **17. AUTHORIZATION**

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

26 ///
27 ///
28 ///

1 AGREED TO:

2 DATE: 10/18/04

3 Whitney Leeman
4 Plaintiff Whitney R. Leeman, Ph.D.

6 AGREED TO:

7 DATE: _____

9 Defendant Z Gallerie

11 APPROVED AS TO FORM:

12 DATE: 10/18/04

13 Cliff A
14 Clifford A. Chanler
15 CHANLER LAW GROUP
16 Attorneys for Plaintiff Whitney R. Leeman, Ph.D.

17 APPROVED AS TO FORM:

18 DATE: _____

19 _____
20 Carla J. Feldman
21 Loeb & Loeb LLP
22 Attorneys for Defendant Z Gallerie

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1 **AGREED TO:**

2 **DATE:** _____

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4 **Plaintiff Whitney R. Leeman, Ph.D.**

5

6 **AGREED TO:**

7 **DATE:** 10/15/04

8

9 **Defendant Z Gallerie**

10

11 **APPROVED AS TO FORM:**

12 **DATE:** _____

13

14 **Clifford A. Chanler**
15 **CHANLER LAW GROUP**
16 **Attorneys for Plaintiff Whitney R. Leeman, Ph.D.**

17

17 **APPROVED AS TO FORM:**

18 **DATE:** October 15, 2004

19

20 **Carla J. Feldman**
21 **Loeb & Loeb LLP**
22 **Attorneys for Defendant Z Gallerie**

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EXHIBIT A

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Mugs and other tableware (including Glassware) with Colored Artwork or Designs
(containing lead) on the Exterior, such as Poster Art Mug, Cognac Jacquet #413755680