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

17 WHITNEY R. LEEMAN, Ph.D.,)
18 Plaintiff,)
19 v.)
20 ARC INTERNATIONAL NORTH AMERICA)
21 INC., C.C.A. INTERNATIONAL INC., SEARS)
ROEBUCK AND CO., and DOES 1 through)
150,)
22 Defendants.)
23)
24)
25)
26)

Case No. CGC-03-418025
(Consolidated Action)

**[PROPOSED] ORDER APPROVING
PROPOSITION 65 SETTLEMENT AND
CONSENT JUDGMENT**

Date: August 31, 2004
Time: 10:00 a.m.
Dept: 501
Judge: Hon. James J. McBride

ENDORSED
FILED
San Francisco County Superior Court
AUG 31 2004
GORDON PARK-LI, Clerk
BY: GARTH SAYERS
Deputy Clerk

1 WHITNEY R. LEEMAN, Ph.D.,

2 Plaintiff,

3 v.

4 SPENCER GIFTS, INC., and DOES 1 through
5 150,

6 Defendants

) Case No. CGC-03-418033

7 WHITNEY R. LEEMAN, Ph.D.,

8 Plaintiff,

9 v.

10 ARTLAND, INC., LINENS 'N THINGS, INC.
and DOES 1 through 150,

11 Defendants.

) Case No. CGC-03-418034

12 WHITNEY R. LEEMAN, Ph.D.,

13 Plaintiff,

14 v.

15 THE WALT DISNEY STORE, INC., WALT
16 DISNEY COMPANY, and DOES 1 through 150,

17 Defendants.

) Case No. CGC-03-418040

18 WHITNEY R. LEEMAN, Ph.D.,

19 Plaintiff,

20 v.

21 COST PLUS, INC., and DOES 1 through 150,

22 Defendants.

) Case No. CGC-03-418041

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WHITNEY R. LEEMAN, Ph.D.,

Plaintiff,

v.

ASSOCIATED MERCHANDISING
CORPORATION, a SUBSIDIARY OF TARGET
CORPORATION; MERVYN'S; TARGET
CORPORATION; and DOES 1 through 150

Defendants.

Case No. CGC-03-418042

WHITNEY R. LEEMAN, Ph.D.,

Plaintiff,

v.

CRATE AND BARREL, and DOES 1 through
150,

Defendants.

Case No. CGC-03-418045

WHITNEY R. LEEMAN, Ph.D.

Plaintiff,

v.

BED BATH & BEYOND, INC., CATAMOUNT
GLASSWARE, FEDERATED DEPARTMENT
STORES, INC., FEDERATED
MERCHANDISING GROUP, GIBSON
OVERSEAS INC., GOTTSALKS, INC., HOME
ESSENTIALS & BEYOND, INC., MACY'S
WEST INC., ROSS STORES, INC., SUR LA
TABLE, INC., TABLETOPS UNLIMITED, INC.,
and DOES 1 through 150,

Defendants.

Case No. CGC-03-422636

1 WHITNEY R. LEEMAN, Ph.D.)

No. CGC-03-422691

2 Plaintiff)

3 v.)

4 LIBBEY GLASS, INC.; and DOES 1 through)
150,)

5 Defendants.)
6)

7 WHITNEY R. LEEMAN, Ph.D.)

No. CGC-03-424682

8 Plaintiff,)

9 v.)

10 BIG LOTS STORES, INC.; MANLEY TOYS USA)
LTD.; PNS STORES, INC.; and DOES 1 through)
150,)

11 Defendants.)
12)

13 WHITNEY R. LEEMAN, Ph.D.)

No. CGC-04-429467

14 Plaintiff,)

15 v.)

16 THE ANCHOR HOCKING COMPANY;)
ANCHOR HOCKING GLASS COMPANY;)
17 NEWELL RUBBERMAID INC.; and DOES 1)
through 150,)

18 Defendants.)
19)

20 WHITNEY R. LEEMAN, Ph.D.)

No. CGC-04-429536

21 Plaintiff,)

22 v.)

23 BALI; KOMODO INTERNATIONAL CORP.;)
and DOES 1 through 150,)

24 Defendants.)
25)
26)

1 In the above-entitled individual and consolidated actions, Plaintiff WHITNEY R.
2 LEEMAN, Ph.D. and Defendants ARC INTERNATIONAL NORTH AMERICA, INC.;
3 ASSOCIATED MERCHANDISING CORPORATION; BALI; BIG LOTS STORES, INC.; COST
4 PLUS, INC.; THE DISNEY STORE, INC.; EUROMARKET DESIGNS, INC., dba CRATE &
5 BARREL; FEDERATED DEPARTMENT STORES, INC.; GIBSON OVERSEAS, INC.; HOME
6 ESSENTIALS AND BEYOND, INC.; GOTTSCHALKS INC.; KOMODO INTERNATIONAL
7 CORP.; LIBBEY GLASS, INC.; LINENS 'N THINGS, INC.; MACY'S WEST, INC.; MERVYN'S;
8 NEWELL RUBBERMAID INC./NEWELL OPERATING CO., INC.'S wholly owned subsidiaries
9 ANCHOR HOCKING SPECIALTY GLASS CO., INC. and ANCHOR HOCKING CO., INC.; PNS
10 STORES, INC.; ROSS STORES, INC.; SPENCER GIFTS, L.L.C.; TABLETOPS UNLIMITED, INC.;
11 and TARGET CORPORATION ("Settling Defendants"), having agreed through their respective
12 counsel that judgment be entered pursuant to the terms of the Stipulation and [Proposed] Order
13 Re: Consent Judgment ("Consent Judgment") entered into by the above-referenced parties and
14 attached hereto as **Exhibit 1**; and after consideration of the papers submitted and the arguments
15 presented, the Court finds that the settlement agreement set out in the attached Consent
16 Judgment meets the criteria established by Senate Bill 471, in that:

- 17 1. The health hazard warning that is required by the Consent Judgment complies with
18 Health & Safety Code section 25249.7 (as amended by Senate Bill 471);
- 19 2. The reimbursement of fees and costs to be paid pursuant to the parties' Consent
20 Judgment is reasonable under California law; and
- 21 3. The civil penalty amount to be paid pursuant to the parties' Consent Judgment is
22 reasonable.

23 Further, *Leeman v. The Anchor Hocking Company, et al.*, San Francisco Superior Court, Case
24 No. 04-429467 and *Leeman v. Bali*, San Francisco Superior Court, Case No. 04-429536, having
25 asserted substantially identical claims as those asserted in *Leeman v. Arc International North*
26 *America, Inc., et al.*, San Francisco Superior Court, Consolidated Case No. 04-418025, these claims

1 being under the California Safe Drinking Water and Toxic Enforcement Act of 1986
2 ("Proposition 65"), alleging that each defendant has knowingly and intentionally failed to warn
3 individuals of exposures to lead and lead compounds from drinkware without a clear and
4 reasonable warning,

5 Plaintiffs WHITNEY R. LEEMAN, Ph.D. and MICHAEL DIPIRRO and Settling Defendants
6 having agreed through their respective counsel that, upon the Court's approval of the Consent
7 Judgment, *Leeman v. The Anchor Hocking Company, et al.*, San Francisco Superior Court, Case No.
8 04-429467 and *Leeman v. Bali*, San Francisco Superior Court, Case No. 04-429536 be deemed to have
9 been consolidated and resolved along with the lead case, *Leeman v. Arc International North America,*
10 *Inc., et al.*, San Francisco Superior Court, Consolidated Case No. 04-418025,

11 IT IS HEREBY ORDERED that

12 (1) judgment be entered in each individual case referenced above, in accordance with the
13 terms of the Consent Judgment, attached hereto as **Exhibit 1**; and

14 (2) that *Leeman v. The Anchor Hocking Company, et al.*, San Francisco Superior Court, Case
15 No. 04-429467 and *Leeman v. Bali*, San Francisco Superior Court, Case No. 04-429536 are deemed
16 consolidated with *Leeman v. Arc International North America, Inc., et al.*, San Francisco Superior
17 Court, Consolidated Case No. 04-418025.

18 IT IS SO ORDERED.

19
20 Dated: AUG 31 2004 ~~2004~~

JAMES J. McBRIDE

Hon. James J. McBride
Judge of the San Francisco Superior Court

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17 and MICHAEL DIPIRRO

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

19 WHITNEY R. LEEMAN, Ph.D.,

20 Plaintiff,

21 vs.

22 ARC INTERNATIONAL NORTH
23 AMERICA, INC., et al.,

24 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**

25 AND CONSOLIDATED ACTIONS.

26 **1. INTRODUCTION**

27 **1.1 Plaintiffs and Settling Defendants** This Consent Judgment is entered into by and
28 between plaintiff Whitney Leeman, Ph.D. (hereafter "Dr. Leeman" or "Leeman" or "Plaintiffs")
and each of the following defendants: Arc International North America, Inc.; Associated
Merchandising Corporation; Bali; Big Lots Stores, Inc.; Cost Plus, Inc.; The Disney Store, Inc.;
Euromarket Designs, Inc. dba Crate & Barrel; Federated Department Stores, Inc.; Gibson

1 Overseas, Inc.; Home Essentials and Beyond, Inc.; Gottschalks Inc.; Komodo International Corp.;
2 Libbey Glass, Inc.; Linens 'N Things, Inc.; Macy's West, Inc.; Mervyn's; Newell Rubbermaid
3 Inc./Newell Operating Co., Inc.'s wholly owned subsidiaries, Anchor Hocking Specialty Glass
4 Co., Inc. and Anchor Hocking Co., Inc. (collectively, "Anchor Hocking"); PNS Stores, Inc; Ross
5 Stores, Inc.; Spencer Gifts, L.L.C.; Tabletops Unlimited, Inc., and Target Corporation (hereafter
6 collectively "Settling Defendants"), with Plaintiffs and Settling Defendants collectively referred
7 to as the "Parties" and Leeman and each Settling Defendant being a "Party".

8 **1.2 Settling Non-Retailers and Settling Retailers** For purposes of this Consent
9 Judgment only, defendants Anchor Hocking, Arc International North America, Inc., Gibson
10 Overseas, Inc., Home Essentials and Beyond, Inc., Tabletops Unlimited, Inc. and Libbey Glass,
11 Inc. shall be collectively known as the "Settling Non-Retailers" and each one a "Settling Non-
12 Retailer" and the remaining Settling Defendants shall be collectively known as the "Settling
13 Retailers" and each one of them a "Settling Retailer."

14 **1.3 Plaintiffs** Dr. Leeman is an individual residing in Sacramento, California who
15 seeks to promote awareness of exposures to toxic chemicals and improve human health by
16 reducing or eliminating hazardous substances contained in consumer and industrial products.

17 **1.4 General Allegations** Plaintiffs allege that each Settling Defendant has
18 manufactured, distributed and/or sold in the State of California certain glassware and/or ceramic
19 products (including, but not limited to, beverage glasses, goblets, wine glasses, tumblers, juice
20 glasses, measuring glasses, photo real mugs, coolers, iced beverages and mugs) with colored
21 artwork, designs or markings on the exterior surface with materials in that colored artwork,
22 designs or markings that contain lead (and/or lead compounds) that are listed pursuant to the Safe
23 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5
24 *et seq.*, also known as Proposition 65, to cause cancer and birth defects and other reproductive
25 harm. Lead (and/or lead compounds) shall be referred to herein as "Listed Chemicals."

26 **1.5 Product Descriptions** Each Settling Defendant has described on their respective
27 Exhibit A the glassware and ceramic products that are covered as to them by this Consent
28 Judgment (with such products collectively referred to herein as the "Products").

1 **1.6 Notices of Violation** Over a period of several months, commencing on February
2 7, 2003, Dr. Leeman served each Settling Defendant and various public enforcement agencies
3 with documents, each entitled “60-Day Notice of Violation” (“Notice”) that provided the Settling
4 Defendants and such public enforcers with notice that alleged that each Settling Defendant was in
5 violation of Health & Safety Code §25249.6 for failing to warn purchasers that certain products
6 that it sold expose users in California to lead and lead compounds. On or before May 19, 2004,
7 Dr. Leeman will be serving a Supplemental Notice on each Settling Defendant and all required
8 public enforcers expanding the Plaintiffs’ prior allegations concerning the products to include
9 alleged exposures to cadmium (“Supplemental Notices”).

10 **1.7 Complaints** Commencing on March 5, 2003 and continuing thereafter, Dr.
11 Leeman, in the interest of the general public in California, filed complaints and amended
12 complaints (hereafter referred to as “Complaints” or the “Actions”) in the Superior Court for the
13 City and County of San Francisco against various defendants, including the Settling Defendants,
14 alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to one or
15 more of the Listed Chemicals contained in certain products sold by the Settling Defendants.
16 Pursuant to orders of the San Francisco Superior Court, all Complaints except the complaints
17 filed against Anchor Hocking, Bali, and Komodo International Corp have previously been
18 consolidated under the caption of *Whitney R. Leeman, Ph.D. v. ARC International, et al.*, San
19 Francisco Superior Court Action No. 418025. To facilitate the administration of justice, the
20 Anchor Hocking complaint (no. 04-429467) and Bali and Komodo International Corp complaint
21 (no. 04-429536) shall also be deemed to have been consolidated with these Complaints upon
22 entry of this Consent Judgment by the Court. Upon the running of the 60-day periods associated
23 with the issuance of the Supplemental Notices, and provided that no authorized public enforcer of
24 Proposition 65 initiates an action against the Settling Defendants based on the additional
25 allegations therein contained in the interim, the above captioned Complaints and this Consent
26 Judgment shall be deemed such that the definition of “Listed Chemicals” as used herein shall
27 likewise be deemed to have been expanded from lead (and/or lead compounds) to include the
28 listed chemical, cadmium, as well.

1 **1.8 No Admission** Each Settling Defendant denies the material factual and legal
2 allegations contained in Plaintiffs' Notices and Complaints and maintains that all products that it
3 has sold and distributed in California including the Products have been and are in compliance
4 with all laws. Nothing in this Consent Judgment shall be construed as an admission by any
5 Settling Defendant of any fact, finding, issue of law, or violation of law, nor shall compliance
6 with this Agreement constitute or be construed as an admission by any Settling Defendant of any
7 fact, finding, conclusion, issue of law or violation of law. However, this section shall not
8 diminish or otherwise affect the obligations, responsibilities and duties of each Settling Defendant
9 under this Consent Judgment.

10 **1.9 Consent to Jurisdiction** For purposes of this Consent Judgment only, the Parties
11 stipulate that this Court has jurisdiction over the allegations of violations contained in the
12 Complaints and personal jurisdiction over Settling Defendants as to the acts alleged in the
13 Complaints, that venue is proper in the County of San Francisco, and that this Court has
14 jurisdiction to enter this Consent Judgment and to enforce the provisions thereof.

15 **1.10 Effective Date** For purposes of this Consent Judgment, the term "Execution Date"
16 shall mean May 10, 2004 and the term "Effective Date" shall mean the date upon which this
17 Consent Judgment is approved and entered as a judgment by the Court.

18 **2. INJUNCTIVE RELIEF: REFORMULATION AND PROPOSITION 65 WARNINGS**

19 **2.1. SETTLING NON-RETAILER'S REFORMULATION COMMITMENTS**

20 Each Settling Non-Retailer shall comply with each of the following terms of injunctive relief,
21 including the reformulation commitments, according to the deadlines set forth in
22 subsections 2.1.A through 2.1.F below:

23 **2.1.A. Interim Reformulation Requirements For Glassware Products**

24 **Manufactured Between June 30, 2004 and December 31, 2004** All Products (other than
25 ceramic mugs) manufactured after June 30, 2004 that are reasonably likely to be sold in
26 California shall either:

- 27 i. use decorating materials containing less than 0.06% lead by weight
28 as measured at a Settling Non-Retailer's option, either before or
 after the material is fired onto (or otherwise affixed to) the

1 glassware, using a sample size of the materials in question
2 measuring approximately 50-100 mg and a test method of sufficient
3 sensitivity to establish a limit of quantitation (as distinguished from
4 detection) of less than 600 parts per million (“ppm”); or

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- ii. achieve a result of 1.75 ppm or less for lead when tested under the protocol attached as Exhibit B.

For purposes of this Agreement, a Product is “manufactured” at the time that the exterior decoration is fired onto (or otherwise affixed to) the Product. This subsection (2.1.A) excludes those Products covered by subsections 2.1.B (children’s products); 2.1.D (new designs); 2.1.F (shot glasses); and 2.1.G (ceramic mugs).

2.1.B. Final Reformulation Requirements for Products Intended For Use By And Marketed And Sold To Children All Products (other than ceramic mugs) manufactured after October 31, 2004, that are reasonably likely to be sold in California and that are intended or marketed primarily for use by children, shall only use decorating materials containing less than 0.06% lead by weight as measured, at the Settling Non-Retailer’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. As used in this Consent Judgment, “intended or marketed primarily for use by children” shall be deemed to mean the Products identified on Exhibit C hereto and products analogous thereto (including, but not limited to, certain sizes of juice glasses, 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 C (and hence “intended or marketed primarily for use by children”), Dr. Leeman shall notify each affected Settling Non-Retailer of her position in writing and shall meet and confer with that Settling Non-Retailer to attempt to resolve the issue during a period not to exceed 30 days from the date of the written notice. If the issue is resolved at this point such that a product will be considered to be “intended or marketed primarily for use by children,” the Settling Non-Retailer shall be given up to two months to cease its current manufacturing of the Product in question and to address the requirements of this subsection with

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

15 **2.1.C. Interim Reformulation Requirements For Glassware Products**

16 **Manufactured Between January 1, 2005 and December 31, 2007** All Products (other than
17 ceramic mugs) manufactured between January 1, 2005 and December 31, 2007, that are
18 reasonably likely to be sold in California shall either:

- 19 i. use decorating materials containing less than 0.06% lead by weight
20 as measured at a Settling Non-Retailer's option, either before or
21 after the material is fired onto (or otherwise affixed to) the
22 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;
or
23 ii. achieve a result of 1.5 ppm or less for lead when tested under the
24 protocol attached as Exhibit B.

25 This subsection (2.1.C) excludes those Products covered by subsections 2.1.B (children's
26 products); 2.1.D (new designs); 2.1.F (shot glasses); and 2.1.G (ceramic mugs).

27 **2.1.D. Final Reformulation Requirements For Newly-Designed Glassware**

28 **Products** All glassware Products manufactured after December 31, 2004, that are reasonably

1 likely to be sold in California and that contain *new* designs, shall use only decorating materials
2 containing less than 0.06% lead by weight as measured, at the Settling Non-Retailer's option,
3 either before or after the material is fired onto (or otherwise affixed to) the glassware, using a
4 sample size of the materials in question measuring approximately 50-100 mg and a test method of
5 sufficient sensitivity to establish a limit of quantitation of less than 600 ppm. As used in this
6 subsection and subsection 2.1.D.(i), "new designs" shall be deemed to mean Products involving
7 any new patterns, colors or designs for which 25% or more of the decoration of an existing
8 pattern, color or design, as measured by decorated surface area, has been modified. (However, if
9 the new color, which is added to an existing design contains a lower lead content than the color it
10 is replacing by at least 50%, then the Product shall not be considered a "new design" on the basis
11 of that change in color.) In the event of a future dispute concerning whether a product involves a
12 "new design" for purposes of this subsection, Dr. Leeman shall notify each affected Settling Non-
13 Retailer of her position in writing and shall meet and confer with that Settling Non-Retailer to
14 attempt to resolve the issue for a period not to exceed 30 days from the date of the written notice.
15 If the issue is resolved at this point such that a product will be considered to be of a "new design"
16 for purposes of this Consent Judgment, the Settling Non-Retailer shall be given up to two months
17 to cease its current manufacturing of the Product in question and to address the requirements of
18 this subsection with respect to that Product or discontinue it. If no such resolution is forthcoming,
19 Dr. Leeman and/or the affected Settling Non-Retailer shall collectively seek the opinion of the
20 California Attorney General's Office within 10 days following the expiration of the 30-day meet
21 and confer period or, if the Attorney General declines to assist, institute, within thirty (30) days a
22 binding arbitration proceeding with the American Arbitration Association in San Francisco whose
23 decision shall be final. If the issue is resolved by the arbitrator such that a product will be
24 considered to be of "new design," the Settling Non-Retailer shall be given up to thirty (30) days
25 to cease its current manufacturing of the Product in question and to address the requirements of
26 this subsection with respect to that Product or discontinue it. The cost of any arbitration services
27 utilized shall initially be borne by both parties; therefore, in which the party not filing the petition
28 shall be obligated to reimburse the filing party fifty percent (50%) of the filing fees within ten

1 (10) days of the initiation of the proceeding. However, the prevailing party shall ultimately be
2 entitled to, in addition to attorneys' fees as set forth in Section 8, reimbursement for its share of
3 the unreimbursed American Arbitration Association's fees and costs.

4 **2.1.D.(i). Limited Exclusion for New Designs Manufactured During**
5 **Interim Period** Notwithstanding the final reformulation commitments made by the Settling
6 Non-Retailers with respect to "new designs" in subsection 2.1.D. above, between December 31,
7 2004 and December 31, 2007, a Settling Non-Retailer will be allowed to sell a limited number of
8 "new designs" of glassware Products in California with decorating materials containing 0.06% or
9 more lead by weight, provided that any such glassware: (a) is not subject to subsection 2.1.B.;
10 (b) does not constitute in excess of five percent (5%) of the number of "newly designed" Products
11 manufactured by the Settling Non-Retailer that were sold nationally during the preceding
12 calendar year in question; (c) meets the applicable interim reformulation standards set forth in
13 subsections 2.1.A and 2.1.C, as applicable. Any Settling Non-Retailer that avails itself of this
14 provision shall provide Plaintiffs and the California Attorney General's Office with a written
15 report substantiating that it has addressed the requirements of this provision no later than March
16 31 of the calendar year immediately following the calendar year in which the Settling Non-
17 Retailer invokes this subsection. The "number of 'newly designed' Products" manufactured shall
18 be measured by the number of patterns sold, not by the quantity of individual units sold or
19 revenues realized from such sales

20 **2.1.E. Final Reformulation Requirements For All Glassware Products**
21 **Manufactured After December 31, 2007** All Products (other than ceramic mugs) manufactured
22 after December 31, 2007, that are reasonably likely to be sold in California shall only use
23 decorating materials containing less than 0.06% lead by weight as measured, at a Settling Non-
24 Retailer's option, either before or after the material is fired onto (or otherwise affixed to) the
25 glassware, using a sample size of the materials in question measuring approximately 50-100 mg
26 and a test method of sufficient sensitivity to establish a limit of quantitation of less than 600 ppm.

27 **2.1.E.(i). Limited Exclusion** Notwithstanding the reformulation
28 commitments made by the Settling Non-Retailers in subsection 2.1.E. above, a Settling Non-

1 Retailer will be allowed to sell glassware Products in California with decorating materials
2 containing 0.06% or more lead by weight provided that any such glassware: (a) is not subject to
3 the requirements set forth in subsections 2.1.B.; (b) in an amount that does not exceed 1.25% of
4 all Products manufactured by the Settling Non-Retailer that were sold nationally in calendar year
5 2003; (c) contains a clear and reasonable warning for reproductive toxicity pursuant to
6 subsection 2.3; and (d) meets the applicable interim reformulation standard set forth in
7 subsection 2.1.C. Any Settling Non-Retailer that avails itself of this provision shall provide
8 Plaintiffs and the California Attorney General's Office with a written report substantiating that it
9 has addressed the requirements of this provision no later than three (3) months after initiating the
10 manufacture of the Products in question. The "amount" of Products sold shall be measured by the
11 quantity of individual units sold, and not by the quantity of patterns sold or revenues realized
12 from such sales.

13 **2.1.F. Additional Interim and Final Reformulation Requirements**
14 **Concerning Decoration Within the Lip and Rim Area, Including With Respect to Cadmium**

15 All Products manufactured after the Effective Date that are reasonably likely to be sold in
16 California shall not contain *any* designs or decorations within the top twenty (20) millimeters of
17 the exterior surface as measured by the protocol attached as Exhibit D, 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
measuring approximately 50-100 mg and a test method of sufficient
sensitivity to establish a limit of quantitation of less than 200 ppm; and
- 23 ii. drinkware that has less than a total of sixty (60) millimeters of
24 decorating area below the external rim and which is not "intended
25 or marketed primarily for use by children" (e.g., shot glasses);
26 provided, however, that to be so excluded, such drinkware shall, as
27 of December 31, 2004, only be manufactured with decorating
28 materials containing less than 0.06% lead by weight as measured, at
the Settling Non-Retailer'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 **2.1.G. Interim and Final Reformulation Requirements for Ceramic Mugs**

2 Ceramic mugs shall be subject to the requirements of this subsection and subsection 2.1.F and
3 shall not be subject to the requirements of the other subsections in 2.1 above. Ceramic mugs
4 manufactured after June 30, 2004, that are reasonably likely to be sold in California shall either:

- 5 i. use decorating materials containing less than 0.06% lead by weight
6 as measured at a Settling Non-Retailer's option, either before or
7 after the material is fired onto (or otherwise affixed to) the ceramic
8 ware, using a sample size of the materials in question measuring
9 approximately 50-100 mg and a test method of sufficient sensitivity
 to establish a limit of quantitation of less than 600 ppm; or
- ii. achieve a result of .99 ppm or less for lead when tested under the
 protocol attached as Exhibit B.

10 **2.1.H. Definition of Reformulated Products** Products that satisfy

11 subsections 2.1.A through 2.1.G, as applicable, are deemed "Reformulated Products."

12 **2.2. WARNING OBLIGATIONS FOR NON-REFORMULATED PRODUCTS**

13 **2.2.A. Required Warnings and Covered Products** After September 1, 2004,

14 Settling Retailers shall not sell or offer for sale in California any Covered Products containing the
15 Listed Chemicals, unless warnings are given in accordance with one or more provisions in
16 subsection 2.3 below. As used in this Consent Judgment, "Covered Products" shall mean all
17 Products sold in California except those excluded in subsection 2.2.B below.

18 **2.2.B. Exceptions** The warning requirements set forth in subsections 2.2.A and

19 2.3 below shall not apply to:

- 20 i. any Products manufactured before September 1, 2004,
21 ii. Reformulated Products, or
22 iii. any Products manufactured by any other person in the course of
23 doing business who is subject to a final judgment addressing
24 Proposition 65 warning obligations arising from alleged exposures
25 to glassware and/or ceramic products with colored artwork, designs
26 or markings on the exterior surface including, but not limited to,
27 Dansk International Designs, Inc., Mikasa, Inc., Pfaltzgraff, Inc.,
28 and Salton, Inc.

1 2.3 CLEAR AND REASONABLE WARNINGS

2 2.3.A. Product Labeling A warning is affixed to the packaging, labeling or
3 directly to or on a Product by the manufacturer, importer, or distributor of the Product, unless the
4 Settling Retailer consents, in writing, to provide that warning itself, that states:

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

9 or

10 **WARNING: The materials used as colored decorations on the**
11 **exterior of these products contain lead, a chemical**
12 **known to the State of California to cause birth defects**
13 **or other reproductive harm.¹**

14 or

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

19 Warnings issued for Covered Products pursuant to this subsection shall be
20 prominently placed with such conspicuousness as compared with other words, statements,
21 designs, or devices as to render it likely to be read and understood by an ordinary individual
22 under customary conditions of use or purchase. Any changes to the language or format of the
23 warning required by this subsection shall only be made following: (1) approval of one or both
24 Plaintiffs; (2) approval from the California Attorney General's Office, provided that written
25 notice of at least fifteen (15) days is given to Plaintiffs for the opportunity to comment; or
26 (3) Court approval.

27 2.3.B. Point-of-Sale Warnings A Settling Defendant may execute its warning
28 obligations, where applicable, through the posting of signs at retail outlets in the State of
California at which Covered Products are sold, in accordance with the terms specified in
subsections 2.3.B.1 and 2.3.B.2.

¹ This formulation of the warning may only be used with respect to Covered Products when sold as a set.

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

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

7 or

8 **WARNING: The materials used as colored decorations on the**
9 **exterior of glassware products sold in this store**
10 **contain lead, a chemical known to the State of**
11 **California to cause birth defects or other**
12 **reproductive harm².**

13 or

14 **WARNING: The materials used as colored decorations on the**
15 **exterior of the following glassware products sold**
16 **in this store contain lead, a chemical known to**
17 **the State of California to cause birth defects or**
18 **other reproductive harm; [list Covered Products**
19 **here].**

20 2. In lieu of displaying warning signs with the language set forth
21 above, a Settling Retailer who owns or operates one or more retail outlets in California may elect
22 to combine any point-of-sale warning signs required under this Consent Judgment with any
23 warnings it provides for ceramic tableware (as defined in the Consent Judgment in *People v.*
24 *Josiah Wedgwood & Sons, Inc.*) or lead crystal (as defined in the Consent Judgment in *Mateel*
25 *Environmental Justice Foundation v. T.J. Maxx*), through use of the warning signs in the form of
26 Exhibits E or F. If a Settling Retailer elects to provide combined warnings through use of
27 Exhibit E, then the Settling Retailer shall place the Designated Symbol (the yellow triangle shown
28 in Exhibit E) next to each display of Covered Product, ceramic tableware, and lead crystal for
which a warning is to be given. If a Settling Retailer elects to provide combined warnings
through use of Exhibit F, then the Covered Products for which the warning is to be given shall be
identified by manufacturer and pattern in the warning sign,³ and Designated Symbols need not be

² This formulation of the warning may only be used where the store in which the Covered Products are sold sells only Products constituting Covered Products.

³ If the total number of manufacturers and patterns to be identified on a sign in the form of Exhibit F exceeds six (6),

1 displayed. If a Settling Retailer elects to combine its Covered Products, ceramic tableware, and
2 lead crystal warnings under this subsection, display of warnings for ceramic tableware, lead
3 crystal, and the Covered Products in the manner set forth in this subsection shall constitute
4 compliance with Proposition 65 for all such products.

5 3. A point of sale warning provided pursuant to subsection 2.3.B.1
6 shall be prominently placed with such conspicuousness as compared with other words,
7 statements, designs, or devices as to render it likely to be read and understood by an ordinary
8 individual under customary conditions of use or purchase and shall be placed or written in a
9 manner such that the consumer understands to which specific Covered Products the warnings
10 apply so as to minimize if not eliminate the chances that an overwarning situation will arise. Any
11 changes to the language or format of the warning required for Covered Products by this
12 subsection shall only be made following: (1) approval of Plaintiffs; (2) approval from the
13 California Attorney General's Office, provided that written notice of at least fifteen (15) days is
14 given to Plaintiffs for the opportunity to comment; or (3) Court approval.

15 4. Any Settling Non-Retailer who intends to utilize point of sale
16 warnings to comply with this Consent Judgment must provide notice as required by this Consent
17 Judgment to each retailer to whom the Settling Non-Retailer ships the Products for sale in
18 California and obtain the written consent of such retailer before shipping the Covered Products.
19 Such notice shall include a copy of this Consent Judgment and any required warning materials
20 (including, as appropriate, signs and/or stickers with the Designated Symbol). A Settling Non-
21 Retailer that has obtained the consent of a retailer shall not be found to have violated this Consent
22 Judgment if it has complied with the terms of this Consent Judgment and has proof that it
23 transmitted the requisite warnings in the manner provided herein. Nothing in this Consent
24 Judgment shall alter or affect the terms of any contract between such Settling Non-Retailer and
25 Settling Retailer which concerns Covered Products, or to authorize any manufacturer, distributor,
26

27 _____
28 the Settling Retailer shall obtain approval of the sign from the California Attorney General's office before the sign is
used.

1 or importer that is not a party to this Consent Judgment to impose any warning obligation upon
2 any retailer that is a Settling Retailer.

3 **2.3.C. Mail Order and Internet Sales** After September 1, 2004, each Settling
4 Retailer shall not knowingly sell or distribute any of the Covered Products by mail order catalog
5 or the Internet to California residents, unless warnings are provided as set forth below.

6 For Covered Products that a Settling Defendant knows require a warning pursuant
7 to this Consent Judgment and that are sold by the Settling Defendant by mail order or from the
8 Internet to California residents, a warning containing the language in subsection 2.3.A shall be
9 included, at the Settling Defendant's sole option, either: (a) in the mail order catalog (if any) or
10 on the website (if any) pursuant to subsection 2.3.C.1. or 2.3.C.2.; or (b) with the Product when it
11 is shipped to an address in California pursuant to subsection 2.3.C.3. Any warnings given in the
12 mail order catalogs or on the website shall identify the specific Covered Products to which the
13 warning applies. If a Settling Defendant elects to provide warnings in the mail order catalog, then
14 such warnings (at a location designated in subsection 2.3.C.1) shall be included in any new galley
15 prints of such catalogs sent to the printer at least ten (10) business days after notice of entry of
16 this Consent Judgment is served on that Settling Defendant. Nothing in this subsection (2.3.C.)
17 shall require a Settling Defendant to provide warnings for any Covered Product ordered from a
18 mail order catalog printed prior to the date notice of entry of this Consent Judgment is served on
19 Settling Defendant, or modify any such mail order catalogs.

20 **2.3.C.1. Mail Order Catalog** The Warning Message shall be stated
21 within the catalog, either (a) on the inside front cover of any catalog, (b) on the same page as any
22 order form, or (c) on the same page as the price, in the same type size as the surrounding, non-
23 heading text, with the same language as that appearing in subsection 2.3.A.⁴

24 **2.3.C.2. Internet Web Sites** The warning text, or a link to a page
25 containing the warning text, shall be displayed either (a) on the same page on which a Covered
26 Product is displayed, (b) on the same page as any order form for a Covered Product, (c) on the

27 _____
28 ⁴ The restriction set forth in footnote 1 above applies in this context as well.

1 same page as the price for any Covered Product, (d) on one or more pages displayed to a
2 purchaser over the Internet or via electronic mail during the checkout and order confirmation
3 process for sale of a Covered Product, or (e) in any manner such that is likely to be read and
4 understood by an ordinary individual under customary conditions of purchase of a Product,
5 including the same language as that appearing in subsection 2.3.A.. If a link is used, it shall state
6 "Warning information for California residents," and shall be of a size equal to the size of other
7 links on the page.

8 **2.3.C.3. Package Insert or Label** Alternatively, a warning may be
9 provided with the Product when it is shipped directly to a consumer in California, by (a) product
10 labeling pursuant to subsection 2.3.A. above, (b) inserting a card or slip of paper measuring at
11 least 4" x 6" in the shipping carton, or (c) including the warning on the packing slip or customer
12 invoice identifying the Covered Product in lettering of the same size as the description of the
13 Covered Product. The warning shall include the language appearing in subsection 2.3.A. and
14 shall inform the consumer that he or she may return the product for a full refund within 30 days of
15 receipt.

16 **2.3.D. Warnings for Restaurants, Bars and Other Food Service Entities**
17 A Settling Defendant which sells Covered Products to restaurants, bars, or other food service
18 entities, may execute its warning obligations when required hereunder by sending via certified
19 mail to the central purchasing office for all restaurant/bar/food service entity suppliers or each
20 restaurant, bar or other food service entity with whom it transacts business for the commercial use
21 of Covered Products in California: (1) at least two copies of the warning sign contained in
22 Exhibit G and (2) a letter explaining the warning program and providing posting instructions.⁵
23 Settling Defendant shall send these warning materials to the recipients at least once in any
24 calendar year in which the Settling Defendant transacts business with the establishment. A
25 Settling Defendant that has obtained the written consent of a restaurant/bar/food service supplier
26

27 ⁵ The posting instructions shall instruct that the sign is intended for use only where the recipient establishment uses or
28 sells Products constituting Covered Products and that otherwise a sign delineating the names of the Covered Products
for which the warning is being given will need to be employed.

1 or entity to post warnings for Covered Products shall not be found to have violated this Consent
2 Judgment if it has complied with the terms of this Consent Judgment and has proof that it
3 transmitted the requisite warning materials in the manner provided herein.

4 **3. MONETARY PAYMENTS**

5 **3.1 Penalties Pursuant To Health & Safety Code §25249.7(b)** Pursuant to Health &
6 Safety Code Section 25249.7(b), the Settling Defendants shall pay collectively \$300,000 in civil
7 penalties, with the penalty payment to be made on or before July 1, 2004, and made payable to
8 “Chanler Law Group in Trust For Whitney R. Leeman.”⁶

9 **3.2 Additional Penalty Payments** Each Settling Retailer who does not commit, by
10 means of sending Plaintiffs written notice in the manner specified in Section 12 on or before
11 June 30, 2007, that, beginning on or before January 1, 2007, it has purchased (and will continue
12 to purchase) for sale in California only Reformulated Products, shall on July 31, 2007, tender to
13 Plaintiffs an additional sum of \$15,000 in civil penalties. Any such payments shall be made
14 payable to “Chanler Law Group in Trust For Whitney R. Leeman.”

15 **3.3 Apportionment of Penalties Received** All penalty monies received shall be
16 apportioned by Plaintiffs in accordance with Health & Safety Code § 25192, with 75% of these
17 funds remitted to the State of California’s Office of Environmental Health Hazard Assessment
18 and the remaining 25% of these penalty monies retained by Plaintiffs as provided by Health &
19 Safety Code § 25249.12(d) Plaintiffs shall bear all responsibility for apportioning and paying to
20 the State of California the appropriate civil penalties paid in accordance with this Section.

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

22 **4.1** The Parties acknowledge that Plaintiffs and their counsel offered to resolve this
23 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
24 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
25 Settling Defendants then expressed a desire to resolve the fee and cost issue shortly after the other
26

27 ⁶ The Settling Defendants have agreed among themselves that The Disney Store, Inc. will not be contributing to the
28 payment required by this subsection.

1 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
2 the compensation due to Plaintiffs and their counsel under the private attorney general doctrine
3 codified at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date
4 of the Agreement. Under the private attorney general doctrine codified at Code of Civil
5 Procedure § 1021.5, the Settling Defendants shall reimburse Plaintiffs and their counsel for fees
6 and costs, incurred as a result of investigating, bringing this matter to the Settling Defendants'
7 attention, litigating and negotiating a settlement in the public interest. The Settling Defendants
8 shall pay Plaintiffs and their counsel \$ 975,000 for all attorneys' fees, expert and investigation
9 fees, and litigation costs. The payment shall be delivered to Plaintiffs' counsel at the address
10 listed on Exhibit H on or before July 1, 2004. Fifty percent (50%) of the payment should be made
11 payable to the "Chanler Law Group" and the other fifty percent (50%) of the payment should be
12 made payable to the "Sheffer Law Firm." Except as specifically provided in this Consent
13 Judgment, none of the Settling Defendants shall have any further obligation with regard to
14 reimbursement of Plaintiffs' attorney's fees and costs with regard to the Products covered in these
15 Actions.

16 **5. ASSURANCE OF PAYMENTS BY THE SETTLING DEFENDANTS**

17 To assure that the Settling Defendants are in a position to honor the monetary payment
18 obligations set forth in subsection 3.1 and Section 4 above on a timely basis, prior to the
19 Execution Date, an authorized representative of the Settling Defendants shall disclose to Plaintiffs
20 in a separate writing the name and contribution amount of any Settling Defendant responsible for
21 providing more than ten percent (10%) of the total funds due under subsection 3.1 and Section 4
22 above combined. Each Settling Defendant shall, within ten (10) calendar days after the Execution
23 Date, tender the funds that it has separately agreed to contribute to settlement embodied by this
24 Consent Judgment, to a fund administered by a representative of the Settling Defendants, as
25 selected by consensus among the Settling Defendants and whose identity has been disclosed to
26 Plaintiffs' counsel prior to the Execution Date ("Defendants' Representative"). In the event that
27 Defendants' Representative has not received all funds within the time provided by the preceding
28 sentence, it shall, within three (3) business days thereafter provide each Settling Defendant from

1 whom it has not received full payment and Plaintiffs with written notice pursuant to the address
2 shown on Exhibit H, specifying the respective amounts of its delinquency with regard to
3 subsection 3.1 and Section 4 above ("Delinquency Notice"). If a Settling Defendant receives and
4 does not address a Delinquency Notice within three (3) additional business days, Defendants'
5 Representative shall so notify the Plaintiffs. The total sums due under subsection 3.1 and
6 Section 4 of this Consent Judgment shall in this event be deemed to have been reduced by the
7 amount(s) of any non-payment(s) by a Settling Defendant(s) and Plaintiffs may make an election
8 of either: (1) enforcing the non-paying Settling Defendant's obligations under this Agreement
9 with whatever sanctions the Court deems appropriate; or (2) severing the non-paying Settling
10 Defendant from the Consent Judgment prior to its entry and voiding the Agreement as to such
11 defendant so that the litigation and trial date, if one has been set, is placed back on its present
12 track. A Delinquency Notice shall be deemed admissible as evidence in any proceeding brought
13 by Plaintiffs pursuant to the preceding sentence.

14 **6. RELEASE OF ALL CLAIMS**

15 **6.1 Release of the Settling Defendants** In further consideration of the promises and
16 agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4,
17 Plaintiffs, on behalf of themselves, their past and current agents, representatives, attorneys,
18 successors and/or assignees, and in the interest of the general public, hereby waive all rights to
19 institute or participate in, directly or indirectly, any form of legal action and release all claims,
20 including, without limitation, all actions, causes of action, in law or in equity, suits, liabilities,
21 demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not
22 limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether
23 known or unknown, fixed or contingent (collectively "Claims"), against each of the Settling
24 Defendants and each of their distributors, wholesalers, licensors, licensees, auctioneers, retailers,
25 dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries
26 and their respective officers, directors, attorneys, representatives, shareholders, agents, and
27 employees (collectively, "Defendant Releasees") arising under Proposition 65, Business &
28 Professions Code § 17200 *et seq.* and Business & Professions Code § 17500 *et seq.*, related to the

1 Settling Defendants' or Defendant Releasees' alleged failure to warn about exposures to or
2 identification of Listed Chemicals contained in the Products.

3 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
4 binding resolution of any violation of Proposition 65, Business & Professions Code §§ 17200
5 *et seq.* and Business & Professions Code §§ 17500 *et seq.*, that have been or could have been
6 asserted in the Complaints against each of the Settling Defendants or any of them for their alleged
7 failure to provide clear and reasonable warnings of exposure to or identification of Listed
8 Chemicals in the Products.

9 In addition, Plaintiffs, on behalf of themselves, their attorneys, and their agents, waive all
10 rights to institute or participate in, directly or indirectly, any form of legal action and releases all
11 Claims against the Defendant Releasees arising under Proposition 65, Business & Professions
12 Code §§ 17200 *et seq.* and Business & Professions Code §§ 17500 *et seq.*, related to each of the
13 Defendant Releasees' alleged failures to warn about exposures to or identification of Listed
14 Chemicals contained in the Products and for all actions or statements made by each of the Settling
15 Defendants or their attorneys or representatives, in the course of responding to alleged violations
16 of Proposition 65, Business & Professions Code §§ 17200 or Business & Professions Code
17 §§ 17500 by Settling Defendants. Provided however, Plaintiffs shall remain free to institute any
18 form of legal action to enforce the provisions of this Consent Judgment.

19 It is specifically understood and agreed that the Parties intend that each Settling
20 Defendant's compliance with the terms of this Consent Judgment resolves all issues and liability,
21 now and in the future (so long as such Settling Defendant complies with the terms of the Consent
22 Judgment) concerning the Settling Defendant and its Defendant Releasees' compliance with the
23 requirements of Proposition 65, Business and Professions Code §§ 17200 *et seq.* and Business &
24 Professions Code §§ 17500 *et seq.*, as to the Listed Chemicals in the Products.

25 The releases provided by Plaintiffs in this subsection shall not extend upstream to the
26 Product manufacturers or to any Product distributor or supplier from whom a Settling Defendant
27 purchased any Products that are identified in Exhibit A, except insofar as such manufacturer,
28 distributor or supplier is a Settling Defendant. This release also expressly excludes the potential

1 liability of: 1) Pier One Imports, Certified International Corporation, and Artland, Inc. for the sale
2 of any Product not manufactured or distributed by a Settling Defendant, 2) any units of Products
3 that have been sold by a Settling Defendant directly or indirectly to J.C. Penney Company, Inc.
4 and which have, in turn, been sold by J.C. Penney Company, Inc. to consumers in California,
5 including any products that are part of either the *DiPirro v. J.C. Penney* (No. 407150) or *Leeman*
6 *v. J.C. Penney* (No. 418013) cases which are presently pending in the San Francisco Superior
7 Court, and 3) all glassware Products marketed or branded under the name of J.C. Penney
8 Company or any of its affiliated companies.

9 **6.2 The Settling Defendants' Release of Plaintiffs** Each Settling Defendant waives
10 all rights to institute any form of legal action against Plaintiffs or either of them, or their attorneys
11 or representatives, for all actions taken or statements made by Plaintiffs and their attorneys or
12 representatives, in the course of seeking enforcement of Proposition 65, Business & Professions
13 Code §§ 17200 *et seq.* or Business & Professions Code §§ 17500 *et seq.* in these Actions.

14 **7. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved and entered by the Court and
16 shall be null and void if, for any reason, it is not approved and entered by the Court within one
17 year after it has been fully executed by all Parties, in which event any monies that have been
18 provided to Plaintiffs or their counsel pursuant to subsection 3.1 or Section 4 above, shall be
19 refunded within fifteen (15) days.

20 **8. SEVERABILITY**

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

24 **9. ATTORNEYS' FEES**

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

1 **10. ENFORCEMENT OF CONSENT JUDGMENT WITH REGARD TO RETAIL**
2 **STORES IN CALIFORNIA**

3 **10.1** Before moving to enforce the terms and conditions of Section 2 of this Consent
4 Judgment against a Settling Retailer with respect to an alleged violation occurring at a retail store
5 located in California, Plaintiffs and others must follow the procedures set forth in
6 subsections 10.2 through 10.4.

7 **10.2** In the event that Plaintiffs and/or their attorneys, agents, assigns, or any other
8 person acting in the public interest under Health & Safety Code § 25249.7(d), (hereinafter
9 “Notifying Person”) identify one or more retail stores in California owned and operated by a
10 Settling Retailer at which Products are sold (hereinafter “retail outlet”) for which the warnings for
11 those Covered Products required under subsections 2.3.A or 2.3.B of this Consent Judgment are
12 not being given, such Notifying Person shall notify, in writing, each responsible Settling Retailer
13 of such alleged failure to warn (the “Notice of Breach”). The Notice of Breach shall be sent by
14 first class mail, with proof of service, to the person(s) identified in Exhibit H, and must be served
15 within sixty (60) days of the date the alleged violation was observed. The Notice of Breach shall
16 identify the date the alleged violation was observed and the retail outlet in question, and
17 reasonably describe the nature of the alleged violation with sufficient detail to allow the Settling
18 Retailers to determine the basis of the claim being asserted and the identities of the Covered
19 Products to which those assertions apply.

20 **10.3** In the event that the Notifying Person identifies a specific retail outlet, other than
21 the specific one identified in subsection 10.2 of this Consent Judgment, not giving warnings for
22 Covered Products as required under subsections 2.3.A or 2.3.B of this Consent Judgment, such
23 Notifying Person shall serve the Settling Retailer with another Notice of Breach in the manner
24 described in subsection 10.2 and provide the information required in subsection 10.2.

25 **10.4** The Notifying Person shall take no further action against any Settling Retailer
26 unless the Notifying Person discovers, at least thirty (30) days after service of the Notices of
27 Breach served pursuant to subsections 10.2 and 10.3, another failure to warn for any Covered
28 Product whether or not the alleged failure to warn is at the same retail outlet(s) identified in the

1 Notices of Breach served pursuant to subsections 10.2 and 10.3.

2 **11. GOVERNING LAW**

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

8 **12. NOTICES**

9 All correspondence and notices required to be provided pursuant to this Consent Judgment
10 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,
11 return receipt requested or (ii) overnight courier on any Party by the others at the addresses listed
12 in Exhibit H. Any Party, from time to time, may specify a change of address to which all notices
13 and other communications shall be sent.

14 **13. NO ADMISSIONS.**

15 Nothing in this Consent Judgment shall constitute or be construed as an admission by any
16 of the Settling Defendants of any fact, finding, conclusion, issue of law, or violation of law, nor
17 shall compliance with this Consent Judgment constitute or be construed as an admission by any of
18 the Settling Defendants of any fact, finding, conclusion, issue of issue of law, or violation of law,
19 such being specifically denied by the Settling Defendants. Each of the Settling Defendants
20 reserve all of their rights and defenses with regard to any claim by any party under Proposition 65
21 or otherwise. However, this Section shall not diminish or otherwise affect the Settling
22 Defendants' obligations, responsibilities and duties under this Consent Judgment.

23 **14. COUNTERPARTS; FACSIMILE SIGNATURES**

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

27 **15. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

28

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

8 **16. ADDITIONAL POST EXECUTION ACTIVITIES**

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

23 **17. MODIFICATION**

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

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 DATE: 6/22/04

7
8 Whitney R. Leeman
9 Plaintiff Whitney/R. Leeman, Ph.D.

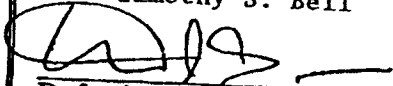
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AGREED TO:

DATE: May 10, 2004

Timothy S. Bell



Defendant Arc International North America, Inc.

AGREED TO:

DATE: _____

Defendant Bali

AGREED TO:

DATE: _____

Defendant Big Lots Stores, Inc. and PNS Stores,

AGREED TO:

DATE: _____

Defendant Cost Plus, Inc.

AGREED TO:

DATE: _____

Defendant The Disney Store, Inc.

AGREED TO:

DATE: _____

Defendant Associated Merchandising Corporation

AGREED TO:

DATE: _____

Defendant Euromarket Designs, Inc. dba Crate & Barrel.

AGREED TO:

DATE: _____

Defendant Federated Department Stores, Inc.

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AGREED TO:

DATE: _____

Defendant Arc International North America, Inc.

AGREED TO:

DATE: _____

Defendant Bali

AGREED TO:

DATE: _____

Defendant Big Lots Stores, Inc. and PNS Stores,

AGREED TO:

DATE: _____

Defendant Cost Plus, Inc.

AGREED TO:

DATE: _____

Defendant The Disney Store, Inc.

AGREED TO:

DATE: _____

Jack N. Reif
Defendant Associated Merchandising Corporation Jack N. Reif
Assistant Treasurer

AGREED TO:

DATE: _____

Defendant Euromarket Designs, Inc. dba Crate & Barrel.

AGREED TO:

DATE: _____

Defendant Federated Department Stores, Inc.

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AGREED TO:

DATE: _____

Defendant Arc International North America, Inc.

AGREED TO:

DATE: 5/11/04

[Handwritten signature]

Defendant Bali

AGREED TO:

DATE: _____

Defendant Big Lots Stores, Inc. and PNS Stores,

AGREED TO:

DATE: _____

Defendant Cost Plus, Inc.

AGREED TO:

DATE: _____

Defendant The Disney Store, Inc.

AGREED TO:

DATE: _____

Defendant Associated Merchandising Corporation

AGREED TO:

DATE: _____

Defendant Euromarket Designs, Inc. dba Crate & Barrel.

AGREED TO:

DATE: _____

Defendant Federated Department Stores, Inc.

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AGREED TO:

DATE: _____

Defendant Arc International North
America, Inc.

AGREED TO:

DATE: _____

Defendant Bali

AGREED TO:

DATE: 5.12.04

Michael A. Schlonsky
Michael A. Schlonsky, Esq.
Vice President, Risk Management &
Administrative Services

Defendant Big Lots Stores, Inc. and
PNS Stores, Inc.

AGREED TO:

DATE: _____

Defendant Cost Plus, Inc.

AGREED TO:

DATE: _____

AGREED TO:

DATE: _____

Defendant Associated Merchandising
Corporation

AGREED TO:

DATE: _____

Defendant Euromarket Designs, Inc. dba Crate
& Barrel.

AGREED TO:

DATE: _____

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AGREED TO:

AGREED TO:

DATE: _____

DATE: _____

Defendant Arc International North America, Inc.

Defendant Associated Merchandising Corporation

AGREED TO:

DATE: _____

Defendant Bali

AGREED TO:

DATE: _____

Defendant Big Lots Stores, Inc. and PNS Stores,

AGREED TO:

DATE: 5/11/04

AGREED TO:

DATE: _____

Luigi
Defendant Cost Plus, Inc.

Defendant Euromarket Designs, Inc. dba Crate & Barrel.

AGREED TO:

DATE: _____

AGREED TO:

DATE: _____

Defendant The Disney Store, Inc.

Defendant Federated Department Stores, Inc.

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AGREED TO:

DATE: _____

Defendant Big Lots Stores, Inc. and
PNS Stores,

AGREED TO:

DATE: _____

Defendant Cost Plus, Inc.

AGREED TO:

DATE: _____

Defendant The Disney Store, Inc.

AGREED TO:

DATE: _____

Defendant Gibson Overseas, Inc.

AGREED TO:

DATE: _____

Defendant Certified International
Corporation.

AGREED TO:

DATE: 5/10/04

Harry S. Siperstein
Defendant Euromarket Designs, Inc. dba Crate
& Barrel.

AGREED TO:

DATE: _____

Defendant Federated Department
Stores, Inc.

AGREED TO:

DATE: _____

Defendant Gottschalks Inc.

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AGREED TO:

DATE: _____

Defendant Arc International North America, Inc.

AGREED TO:

DATE: _____

Defendant Bali

AGREED TO:

DATE: _____

Defendant Big Lots Stores, Inc. and PNS Stores,

AGREED TO:

DATE: _____

Defendant Cost Plus, Inc.

AGREED TO:

DATE: May 11, 2004


Defendant The Disney Store, Inc.

AGREED TO:

DATE: _____

Defendant Associated Merchandising Corporation

AGREED TO:

DATE: _____

Defendant Euromarket Designs, Inc. dba Crate & Barrel.

AGREED TO:

DATE: _____

Defendant Federated Department Stores, Inc.

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AGREED TO:

DATE: _____

Defendant Arc International North
America, Inc.

AGREED TO:

DATE: _____

Defendant Bali

AGREED TO:

DATE: _____

Defendant Big Lots Stores, Inc. and
PNS Stores,

AGREED TO:

DATE: _____

Defendant Cost Plus, Inc.

AGREED TO:

DATE: _____

Defendant The Disney Store, Inc.

AGREED TO:

DATE: _____

Defendant Associated Merchandising
Corporation

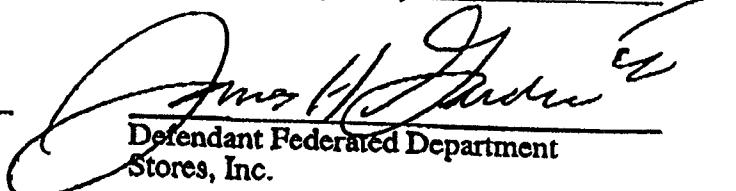
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DATE: _____

Defendant Euromarket Designs, Inc. dba Crate
& Barrel.

AGREED TO:

DATE: 5/13/04


Defendant Federated Department
Stores, Inc.

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AGREED TO:

DATE: _____

Defendant Gibson Overseas, Inc.

AGREED TO:

DATE: _____

Defendant Home Essentials & Beyond, Inc.

AGREED TO:

DATE: _____

Defendant Libbey Glass, Inc.

AGREED TO:

DATE: _____

Defendant Macy's West, Inc.

AGREED TO:

DATE: _____

Defendant Newell Rubbermaid Inc./Newell Operating Co., Inc. 's wholly owned subsidiaries, Anchor Hocking Specialty Glass Co., Inc. and Anchor Hocking Co., Inc.

AGREED TO:

DATE: _____

Defendant Gottschalks Inc.

AGREED TO:

DATE: _____

Defendant Komodo International Corp.

AGREED TO:

DATE: _____

Defendant Linens 'N Things, Inc.

AGREED TO:

DATE: _____

Defendant Mervyn's

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AGREED TO:

DATE: _____

Defendant Gibson Overseas, Inc.

AGREED TO:

DATE: _____

Defendant Home Essentials & Beyond, Inc.

AGREED TO:

DATE: _____

Defendant Libbey Glass, Inc.

AGREED TO:

DATE: _____

Defendant Macy's West, Inc.

AGREED TO:

DATE: _____

Defendant Newell Rubbermaid Inc./Newell Operating Co., Inc. 's wholly owned subsidiaries; Anchor Hocking Specialty Glass Co., Inc. and Anchor Hocking Co., Inc.

AGREED TO:

DATE: 5-10-2004


General Counsel
Defendant Gottschalks Inc.

AGREED TO:

DATE: _____

Defendant Komodo International Corp.

AGREED TO:

DATE: _____

Defendant Linens N Things, Inc.

AGREED TO:

DATE: _____

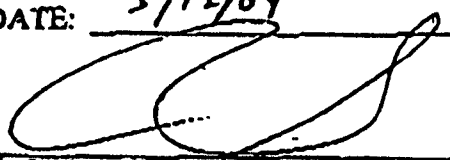
Defendant Mervyn's

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AGREED TO:
DATE: _____

Defendant Gibson Overseas, Inc.

AGREED TO:
DATE: 5/12/04



Defendant Home Essentials & Beyond, Inc.

AGREED TO:
DATE: _____

Defendant Libbey Glass, Inc.

AGREED TO:
DATE: _____

Defendant Macy's West, Inc.

AGREED TO:
DATE: _____

Defendant Newell Rubbermaid Inc./Newell
Operating Co., Inc.'s wholly owned
subsidiaries, Anchor Hocking Specialty Glass
Co., Inc. and Anchor Hocking Co., Inc.

AGREED TO:
DATE: _____

Defendant Gottschalks Inc.

AGREED TO:
DATE: _____

Defendant Komodo International Corp.

AGREED TO:
DATE: _____

Defendant Linens N Things, Inc.

AGREED TO:
DATE: _____

Defendant Mervyn's

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AGREED TO:

DATE: _____

Defendant Gibson Overseas, Inc.

AGREED TO:

DATE: _____

Defendant Home Essentials & Beyond, Inc.

AGREED TO:

DATE: _____

Defendant Libbey Glass, Inc.

AGREED TO:

DATE: _____

Defendant Macy's West, Inc.

AGREED TO:

DATE: _____

Defendant Newell Rubbermaid Inc./Newell Operating Co., Inc. 's wholly owned subsidiaries, Anchor Hocking Specialty Glass Co., Inc. and Anchor Hocking Co., Inc.

AGREED TO:

DATE: _____

Defendant Gottschalks Inc.

AGREED TO:

DATE: 5/11/04

[Signature]
Defendant Komodo International Corp.

AGREED TO:

DATE: _____

Defendant Linens N Things, Inc.

AGREED TO:

DATE: _____

Defendant Mervyn's

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Defendant Gibson Overseas, Inc.

AGREED TO:

DATE: _____

Defendant Gottschalks Inc.

AGREED TO:

DATE: _____

Defendant Home Essentials & Beyond, Inc.

AGREED TO:

DATE: May 12, 2007

Defendant Komodo International Corp.

AGREED TO:

DATE: _____

Libbey Glass Inc
By: R.H. Smith, Vice President
Defendant Libbey Glass, Inc.

AGREED TO:

DATE: _____

Defendant Linens 'N Things, Inc.

AGREED TO:

DATE: _____

Defendant Macy's West, Inc.

AGREED TO:

DATE: _____

Defendant Mervyn's

Defendant Newell Rubbermaid Inc./Newell
Operating Co., Inc. 's wholly owned
subsidiaries, Anchor Hocking Specialty Glass
Co., Inc. and Anchor Hocking Co., Inc.

AGREED TO:

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AGREED TO:

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Defendant Gibson Overseas, Inc.

AGREED TO:

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Defendant Home Essentials & Beyond, Inc.

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Defendant Libbey Glass, Inc.

AGREED TO:

DATE: _____

Defendant Macy's West, Inc.

AGREED TO:

DATE: _____

Defendant Newell Rubbermaid Inc./Newell Operating Co., Inc. 's wholly owned subsidiaries, Anchor Hocking Specialty Glass Co., Inc. and Anchor Hocking Co., Inc.

AGREED TO:

DATE: _____

Defendant Gottschalks Inc.

AGREED TO:

DATE: _____

Defendant Komodo International Corp.

AGREED TO:

DATE: _____


Defendant Linens N Things, Inc.

AGREED TO:

DATE: _____

Defendant Mervyn's

- 25 -

Stipulation and [Proposed] Order Re: Consent Judgment

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AGREED TO:

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Defendant Gibson Overseas, Inc.

AGREED TO:

DATE: _____

Defendant Home Essentials & Beyond, Inc.

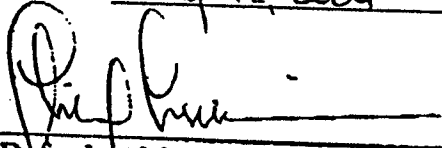
AGREED TO:

DATE: _____

Defendant Libbey Glass, Inc.

AGREED TO:

DATE: May 12, 2004



Defendant Macy's West, Inc.

AGREED TO:

DATE: _____

Defendant Newell Rubbermaid Inc./Newell Operating Co., Inc. 's wholly owned subsidiaries, Anchor Hocking Specialty Glass Co., Inc. and Anchor Hocking Co., Inc.

AGREED TO:

DATE: _____

Defendant Gottschalks Inc.

AGREED TO:

DATE: _____

Defendant Komodo International Corp.

AGREED TO:

DATE: _____

Defendant Linens 'N Things, Inc.

AGREED TO:

DATE: _____

Defendant Mervyn's

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AGREED TO:

DATE: _____

Defendant Gibson Overseas, Inc.

AGREED TO:

DATE: _____

Defendant Home Essentials & Beyond, Inc.

AGREED TO:

DATE: _____

Defendant Libbey Glass, Inc.

AGREED TO:

DATE: _____

Defendant Macy's West, Inc.

AGREED TO:

DATE: _____

Defendant Newell Rubbermaid Inc./Newell Operating Co., Inc. 's wholly owned subsidiaries, Anchor Hocking Specialty Glass Co., Inc. and Anchor Hocking Co., Inc.

AGREED TO:

DATE: _____

Defendant Gottschalks Inc.

AGREED TO:

DATE: _____

Defendant Komodo International Corp.

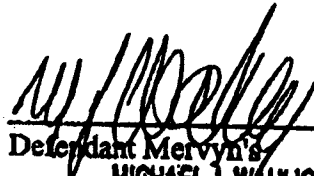
AGREED TO:

DATE: _____

Defendant Linens 'N Things, Inc.

AGREED TO:

DATE: _____


Defendant Mervyn's
MICHAEL J. WAHLIG
AUTHORIZED SIGNATORY

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AGREED TO:

DATE: _____

Defendant Gibson Overseas, Inc.

AGREED TO:

DATE: _____

Defendant Home Essentials & Beyond, Inc.

AGREED TO:

DATE: _____

Defendant Libbey Glass, Inc.

AGREED TO:

DATE: _____

Defendant Macy's West, Inc.

AGREED TO:

DATE: May 11, 2004

D. Matschallat

Defendant Newell Rubbermaid Inc./Newell Operating Co., Inc. 's wholly owned subsidiaries, Anchor Hocking Specialty Glass Co., Inc. and Anchor Hocking Co., Inc.

AGREED TO:

DATE: _____

Defendant Gottschalks Inc.

AGREED TO:

DATE: _____

Defendant Komodo International Corp.

AGREED TO:

DATE: _____

Defendant Linens 'N Things, Inc.

AGREED TO:

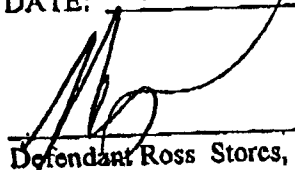
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Defendant Mervyn's

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AGREED TO:

DATE: 5/10/04 _____



Defendant Ross Stores, Inc.

AGREED TO:

DATE: _____

Defendant Tabletops Unlimited, Inc

APPROVED AS TO FORM:

DATE: _____

Clifford Chanler
Chanler Law Group
Attorneys for Plaintiffs Michael DiPirro
and Whitney R. Leeman, Ph.D.

APPROVED AS TO FORM:

DATE: _____

Robert Falk
Morrison & Foerester LLP
Attorneys for Defendants Arc International
North America, Inc. and Newell Rubbermaid
Inc./Newell Operating Co., Inc. 's wholly
owned subsidiaries, Anchor Hocking Specialty

AGREED TO:

DATE: _____

Defendants Spencer Gifts, Inc

AGREED TO:

DATE: _____

Defendant Target Corporation

APPROVED AS TO FORM:

DATE: _____

Gregory Sheffer
Sheffer Law Firm
Attorney for Plaintiffs Michael DiPirro
and Whitney R. Leeman, Ph.D.

APPROVED AS TO FORM:

DATE: _____

Jeffrey Margulies
Parker Milliken Clark O'Hara & Samuelson
Attorneys for Defendants Associated
Merchandising Corporation, Certified
International Corporation, The Disney Store,
Inc., Federated Department Stores, Inc.,
Macy's West, Inc., Mervyn's and Target

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AGREED TO:

DATE: _____

Defendant Ross Stores, Inc.

AGREED TO:

DATE: _____

Defendant Tabletops Unlimited, Inc

APPROVED AS TO FORM:

DATE: _____

Clifford Chanler
Chanler Law Group
Attorneys for Plaintiffs Michael DiPirro
and Whitney R. Leeman, Ph.D.

APPROVED AS TO FORM:

DATE: _____

Robert Falk
Morrison & Foerester LLP
Attorneys for Defendants Arc International
North America, Inc. and Newell Rubbermaid
Inc./Newell Operating Co., Inc. 's wholly
owned subsidiaries, Anchor Hocking Specialty
Glass Co., Inc. and Anchor Hocking Co., Inc.

AGREED TO:

DATE: May 12, 2004



Defendants Spencer Gifts, LLC
Isaac M. Silvera, Executive Vice President
AGREED TO:

DATE: _____

Defendant Target Corporation

APPROVED AS TO FORM:

DATE: _____

Gregory Sheffer
Sheffer Law Firm
Attorney for Plaintiffs Michael DiPirro
and Whitney R. Leeman, Ph.D.

APPROVED AS TO FORM:

DATE: _____

Jeffrey Margulies
Fulbright & Jaworski, LLP
Attorneys for Defendants Associated
Merchandising Corporation, The Disney Store,
Inc., Federated Department Stores, Inc.,
Macy's West, Inc., Mervyn's and Target
Corporation

1 AGREED TO:

AGREED TO:

2 DATE: _____

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5 Defendant Ross Stores, Inc.

Defendants Spencer Gifts, Inc.

6 AGREED TO:

AGREED TO:

7 DATE: 5-11-07

DATE: _____

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10 Defendant Tabletops Unlimited, Inc.

Defendant Target Corporation

11 APPROVED AS TO FORM:

APPROVED AS TO FORM:

12 DATE: _____

DATE: _____

13
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15 Clifford Chanler
16 Chanler Law Group
17 Attorneys for Plaintiffs Michael DiPirro
and Whitney R. Leeman, Ph.D.

Gregory Shaffer
Shaffer Law Firm
Attorney for Plaintiffs Michael DiPirro
and Whitney R. Leeman, Ph.D.

18 APPROVED AS TO FORM:

APPROVED AS TO FORM:

19 DATE: _____

DATE: _____

20
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22 Robert Falk
23 Morrison & Foerster, LLP
24 Attorneys for Defendants Arc International
25 North America, Inc. and Newell Rubbermaid
26 Inc./Newell Operating Co., Inc.'s wholly
27 owned subsidiaries Anchor Hocking Specialty
28 Glass Co., Inc. and Anchor Hocking Co., Inc.

Jeffrey Margulies
Fulbright & Jaworski, LLP
Attorneys for Defendants Associated
Merchandising Corporation, The Disney Store,
Inc., Federated Department Stores, Inc.,
Macy's West, Inc., Mervyn's and Target
Corporation

APPROVED AS TO FORM:

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AGREED TO:

DATE: _____

Defendant Ross Stores, Inc.

AGREED TO:

DATE: _____

Defendant Tabletops Unlimited, Inc

APPROVED AS TO FORM:

DATE: _____

Clifford Chanler
Chanler Law Group
Attorneys for Plaintiffs Michael DiPirro
and Whitney R. Leeman, Ph.D.

APPROVED AS TO FORM:

DATE: _____

Robert Falk
Morrison & Foerester LLP
Attorneys for Defendants Arc International
North America, Inc. and Newell Rubbermaid
Inc./Newell Operating Co., Inc. 's wholly
owned subsidiaries, Anchor Hocking Specialty
Glass Co., Inc. and Anchor Hocking Co., Inc.

APPROVED AS TO FORM:

AGREED TO:

DATE: _____

Defendants Spencer Gifts, Inc

AGREED TO:

DATE: _____


Defendant Target Corporation

**MICHAEL J. WAHLIG
AUTHORIZED SIGNATORY**

APPROVED AS TO FORM:

DATE: _____

Gregory Sheffer
Sheffer Law Firm
Attorney for Plaintiffs Michael DiPirro
and Whitney R. Leeman, Ph.D.

APPROVED AS TO FORM:

DATE: _____

Jeffrey Margulies
Fulbright & Jaworski, LLP
Attorneys for Defendants Associated
Merchandising Corporation, The Disney Store,
Inc., Federated Department Stores, Inc.,
Macy's West, Inc., Mervyn's and Target
Corporation

APPROVED AS TO FORM:

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DATE: _____

Defendant Ross Stores, Inc.

Defendants Spencer Gifts, Inc

AGREED TO:
DATE: _____

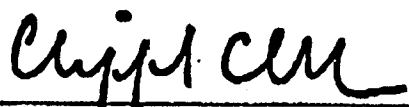
AGREED TO:
DATE: _____

Defendant Tabletops Unlimited, Inc

Defendant Target Corporation

APPROVED AS TO FORM:
DATE: 5/12/04

APPROVED AS TO FORM:
DATE: _____



Clifford Chanler
Chanler Law Group
Attorneys for Plaintiffs Michael DiPirro
and Whitney R. Leeman, Ph.D.

Gregory Sheffer
Sheffer Law Firm
Attorney for Plaintiffs Michael DiPirro
and Whitney R. Leeman, Ph.D.

APPROVED AS TO FORM:
DATE: _____

APPROVED AS TO FORM:
DATE: _____

Robert Falk
Morrison & Foerester LLP
Attorneys for Defendants Arc International
North America, Inc. and Newell Rubbermaid
Inc./Newell Operating Co., Inc. 's wholly
owned subsidiaries, Anchor Hocking Specialty
Glass Co., Inc. and Anchor Hocking Co., Inc.

Jeffrey Margulies
Fulbright & Jaworski, LLP
Attorneys for Defendants Associated
Merchandising Corporation, The Disney Store,
Inc., Federated Department Stores, Inc.,
Macy's West, Inc., Mervyn's and Target
Corporation

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AGREED TO:

DATE: _____

Defendant Ross Stores, Inc.

AGREED TO:

DATE: _____

Defendant Tabletops Unlimited, Inc

APPROVED AS TO FORM:

DATE: _____

Clifford Chanler
Chanler Law Group
Attorneys for Plaintiffs Michael DiPirro
and Whitney R. Leeman, Ph.D.

APPROVED AS TO FORM:

DATE: _____

Robert Falk
Morrison & Foerster LLP
Attorneys for Defendants Arc International
North America, Inc. and Newell Rubbermaid
Inc./Newell Operating Co., Inc.'s wholly
owned subsidiaries, Anchor Hocking Specialty
Glass Co., Inc. and Anchor Hocking Co., Inc.

AGREED TO:

DATE: _____

Defendants Spencer Gifts, Inc

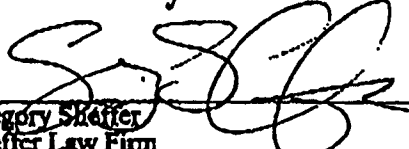
AGREED TO:

DATE: _____

Defendant Target Corporation

APPROVED AS TO FORM:

DATE: May 12, 2004


Gregory Sheffer
Sheffer Law Firm
Attorney for Plaintiffs Michael DiPirro
and Whitney R. Leeman, Ph.D.

APPROVED AS TO FORM:

DATE: _____

Jeffrey Margulies
Fulbright & Jaworski, LLP
Attorneys for Defendants Associated
Merchandising Corporation, The Disney Store,
Inc., Federated Department Stores, Inc.,
Macy's West, Inc., Mervyn's and Target
Corporation

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DATE: _____

Defendant Ross Stores, Inc.

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Defendant Tabletops Unlimited, Inc

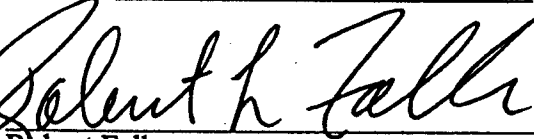
APPROVED AS TO FORM:

DATE: _____

Clifford Chanler
Chanler Law Group
Attorneys for Plaintiffs Michael DiPirro
and Whitney R. Leeman, Ph.D.

APPROVED AS TO FORM:

DATE: 5-10-04



Robert Falk
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North America, Inc. and Newell Rubbermaid
Inc./Newell Operating Co., Inc. 's wholly
owned subsidiaries, Anchor Hocking Specialty
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Defendants Spencer Gifts, Inc

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Defendant Target Corporation


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DATE: _____

Gregory Sheffer
Sheffer Law Firm
Attorney for Plaintiffs Michael DiPirro
and Whitney R. Leeman, Ph.D.

APPROVED AS TO FORM:

DATE: 5/13/04


Jeffrey Margulies
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Attorneys for Defendants Associated
Merchandising Corporation, The Disney Store,
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1
2 APPROVED AS TO FORM:

3 DATE: May 12, 2004

4
5 John E. Dittoe
6 John E. Dittoe
7 Reed Smith LLP
8 Attorneys for Defendant Spencer Gifts, LLC

APPROVED AS TO FORM:

DATE: _____

Andrea Sheridan Ordin
Morgan Lewis & Bockius LLP
Attorneys for Defendant Libbey
Glass, Inc.

9 APPROVED AS TO FORM:

10 DATE: _____

11
12 Judith Praitis
13 Judith Praitis
14 Sidley Austin Brown & Wood LLP
15 Attorneys for Defendant Euromarket Designs,
16 Inc. dba Crate & Barrel, Inc.

APPROVED AS TO FORM:

DATE: _____

Beatrice Mejia
Cooley Godward LLP
Attorneys for Defendant Linens 'N Things, Inc.

17 APPROVED AS TO FORM:

18 DATE: _____

19 Steven McDonald
20 Steven McDonald
21 Luce Forward Hamilton & Scripps
22 Attorneys for Defendants Bali and Komodo
23 International Corp.

APPROVED AS TO FORM:

DATE: _____

Rosemary McGuire
Weakley, Ratliff, Arendt & McGuire
Attorneys for Defendant Gottschalks Inc.

24 APPROVED AS TO FORM:

25 DATE: _____

26 Robert C. Longstreth
27 Robert C. Longstreth
28 Gray Care Ware & Friedenrich LLP
Attorneys for Defendant Ross Stores, Inc.

APPROVED AS TO FORM:

DATE: _____

Michael McQueen
Law Offices of Michael McQueen
Attorneys for Defendant Tabletops
Unlimited, Inc.

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DATE: 5/11/04

Judith Praitis
Sidley Austin Brown & Wood LLP
Attorneys for Defendant Euromarket Designs,
Inc. dba Crate & Barrel, Inc.



~~Beatrice Mejia~~
Cooley Godward LLP
Attorneys for Defendant Linens 'N Things, Inc.
Beatrice

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Steven McDonald
Luce Forward Hamilton & Scripps
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Rosemary McGuire
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Attorneys for Defendant Gottschalks Inc.

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Robert C. Longstreth
Gray Care Ware & Friedenrich LLP
Attorneys for Defendant Ross Stores, Inc.

Michael McQueen
Law Offices of Michael McQueen
Attorneys for Defendant Tabletops
Unlimited, Inc.

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John E. Ditto
Reed Smith LLP
Attorneys for Defendant Spencer Gifts, Inc.

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Morgan Lewis & Bockius LLP
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Judith Praitis
Sidley Austin Brown & Wood LLP
Attorneys for Defendant Euromarket Designs,
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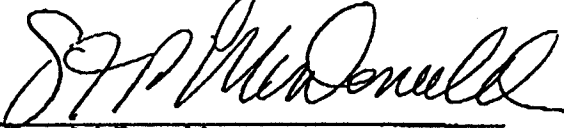
Beatrice Mejia
Cooley Godward LLP
Attorneys for Defendant Linens N Things, Inc.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: May 11, 2004

DATE: _____



Steven McDonald
Luce Forward Hamilton & Scripps
Attorneys for Defendants Bali and Komodo
International Corp.

Rosemary McGuire
Weakley, Ratliff, Arendt & McGuire
Attorneys for Defendant Gottschalks Inc.

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Robert C. Longstreth
Gray Care Ware & Friedenrich LLP
Attorneys for Defendant Ross Stores, Inc.

Michael McQueen
Law Offices of Michael McQueen
Attorneys for Defendant Tabletops
Unlimited, Inc.

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John E. Dittoe
Reed Smith LLP
Attorneys for Defendant Spencer Gifts, Inc.

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Judith Pratts
Sidley Austin Brown & Wood LLP
Attorneys for Defendant Euromarket Designs,
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Steven McDonald
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Andrea Sheridan Ordín
Morgan Lewis & Bockius LLP
Attorneys for Defendant Libbey
Glass, Inc.

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Beatrice Mejia
Cooley Godward LLP
Attorneys for Defendant Linens 'N Things, Inc.

APPROVED AS TO FORM:

DATE: 5/10/04

Rosemary McGuire
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Weakloy, Ratliff, Arendt & McGuire
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DATE: _____

Michael McQueen
Law Offices of Michael McQueen
Attorneys for Defendant Tabletops
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Reed Smith LLP
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Judith Praitis
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Inc. dba Crate & Barrel, Inc.

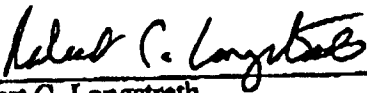
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Steven McDonald
Luce Forward Hamilton & Scripps
Attorneys for Defendants Bali and Komodo
International Corp.

APPROVED AS TO FORM:

DATE: 5/10/04



Robert C. Longstreth
Gray Care Ware & Friedenrich LLP
Attorneys for Defendant Ross Stores, Inc.

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Andrea Sheridan Ordin
Morgan Lewis & Bockius LLP
Attorneys for Defendant Libbey
Glass, Inc.

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Beatrice Mejia
Cooley Godward LLP
Attorneys for Defendant Linens 'N Things, Inc.

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Rosemary McGuire
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Attorneys for Defendant Gottschalks Inc.

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Michael McQueen
Law Offices of Michael McQueen
Attorneys for Defendant Tabletops
Unlimited, Inc.

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John E. Dittoe
Reed Smith LLP
Attorneys for Defendant Spencer Gifts, Inc.

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Judith Praitis
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Andrea Sheridan Ordin
Morgan Lewis & Bockius LLP
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Glass, Inc.

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DATE: _____

Beatrice Mejia
Cooley Godward LLP
Attorneys for Defendant Linens 'N Things, Inc.

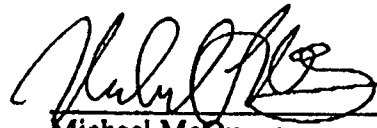
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Rosemary McGuire
Weakley, Ratliff, Arendt & McGuire
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APPROVED AS TO FORM:

DATE: May 10, 2004

Donald S. Burris
Donald S. Burris
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Attorneys for Defendant Home Essentials &
Beyond, Inc.

APPROVED AS TO FORM:

DATE: _____

Michael Delehunt
Michael Delehunt
Foley & Lardner
Attorneys for Defendants Big Lots Stores, Inc.
and PNS Stores, Inc.

APPROVED AS TO FORM:

DATE: _____

Trenton H. Norris
Trenton H. Norris
Bingham McCutchen LLP
Attorneys for Defendant Gibson
Overseas, Inc.

APPROVED AS TO FORM:

DATE: _____

Nancy Casale
Nancy Casale
Cooper White & Cooper LLP
Attorneys for Defendant Cost Plus, Inc.

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Burris & Schoenberg LLP
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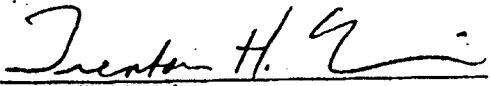
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Michael Delehunt
Foley & Lardner
Attorneys for Defendants Big Lots Stores, Inc.
and PNS Stores, Inc.

APPROVED AS TO FORM:

DATE: 5/10/04



Trenton H. Norris
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Attorneys for Defendant Gibson
Overseas, Inc.

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Cooper White & Cooper LLP
Attorneys for Defendant Cost Plus, Inc.

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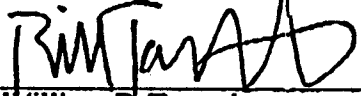
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Donald S. Burris
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Attorneys for Defendant Home Essentials &
Beyond, Inc.

APPROVED AS TO FORM:

DATE: 5/12/04



William F. Tarantino
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Attorneys for Defendants Big Lots Stores, Inc.
and PNS Stores, Inc.

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Trenton H. Norris
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Nancy Casale
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Donald S. Burris
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Michael Delehunt
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Attorneys for Defendants Big Lots Stores, Inc.
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Trenton H. Norris
Bingham McCutchen LLP
Attorneys for Defendant Gibson
Overseas, Inc.

APPROVED AS TO FORM:
DATE: May 12, 2004



Nancy Casale
Cooper White & Cooper LLP
Attorneys for Defendant Cost Plus, Inc.

EXHIBIT A

EXHIBIT A

[definition of Products by each defendant]

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Exhibit A

1. Arc International

Glassware with colored designs on the exterior (containing lead and/or cadmium) manufactured or distributed for sale in California by Arc International North America, Inc. and/or its corporate parent and affiliate (Arc International, Inc. and Durand Glass Manufacturing Company, Inc.). Such products include various sizes and shapes of glassware used for holding alcoholic and non-alcoholic beverages, as well as glassware used for holding candles.

2. Newell Rubbermaid Inc./Newell Operating Co., Inc.'s wholly owned subsidiaries, Anchor Hocking Specialty Glass Co., Inc. and Anchor Hocking Co. Inc. (collectively, "Anchor Hocking")

Glass sets and drinking glasses with colored artwork or designs (containing lead and/or cadmium) on the exterior manufactured, distributed or sold by Anchor Hocking Specialty Glass Co., Inc. and/or Anchor Hocking Co., Inc. Such products include various sizes and shapes of glassware used for holding alcoholic and non-alcoholic beverages.

3. Associated Merchandising Corporation

Wine Glasses/Goblets and Other Glassware Intended for Consumption of Food and/or Beverages with Colored Designs on the Exterior.

4. Bali/Komodo International Corp.

All Glassware products or ceramic mugs intended for the consumption of food or beverages with colored designs, decorations or artwork on the exterior.

5. Big Lots Stores, Inc. and/or PNS Stores, Inc.

All Glassware intended for food or beverage consumption with exterior colored glass decorations or artwork.

6. Cost Plus, Inc.

Ceramic or glass beverage containers that have colored decoration that is on the exterior surface only and does not come into contact with food or beverages.

7. Euromarket Designs, Inc. dba Crate & Barrel

All glassware intended for food and beverage consumption with exterior colored decoration(s).

8. The Disney Store, Inc.

Photo Real Mugs and Ceramic Mugs Intended for Consumption of Food and/or Beverages with Solid Colored Interiors and Colored Designs on the Exterior.

9. Federated Department Stores, Inc.

Wine Glasses, Goblets and Other Glassware Intended for Consumption of Food and/or Beverages with Colored Artwork or Designs on the Exterior.

10. Gibson Overseas, Inc.

All glassware products intended to hold substances for human consumption with colored art or designs on the exterior of the product manufactured, distributed or sold by Gibson Overseas Inc. or its affiliated companies.

11. Gottschalks Inc.

All glassware with exterior decoration that is intended for consumption of food or beverages.

12. Home Essentials & Beyond, Inc.

All glassware intended for food or beverage consumption with exterior colored decorations.

13. Libbey Glass, Inc.

Products as to Libbey Glass Inc. shall mean glass tableware intended to be used to contain beverages or food while such are being consumed, including without limitation, coolers, iced beverage ware and other table glassware, decorated on the exterior surface of the item with decorating material containing lead and cadmium or either, and manufactured or distributed for sale in California by Libbey Glass Inc. Such glass tableware includes glass beverage ware (as for example, coolers, iced beverage ware, tumblers, stemware, barware, mugs and steins among others) and (b) glass dinnerware (as for example dishes, bowls, plates, cups, saucers among others).

14. Linens 'N Things, Inc.

Glassware intended for food or beverage consumption with colored artwork or designs on the exterior.

15. Macy's West, Inc.

Wine Glasses, Goblets and Other Glassware Intended for Consumption of Food and/or Beverages with Colored Artwork or Designs on the Exterior.

16. Mervyn's

Wine Glasses/Goblets and Other Glassware Intended for Consumption of Food and/or Beverages with Colored Designs on the Exterior.

17. Ross Store, Inc.

Glassware intended for food and beverage consumption with colored decorations on the exterior.

18. Spencer Gifts, LLC sued herein as Spencer Gifts, Inc.

Glassware intended for food or beverage consumption with colored artwork or designs on the exterior.

19. Tabletops Unlimited, Inc.

Glassware intended for food or beverage consumption with colored artwork or designs on the exterior.

20. Target Corporation

Wine Glasses/Goblets and Other Glassware Intended for Consumption of Food and/or Beverages with Colored Designs on the Exterior.

EXHIBIT B

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EXHIBIT B
Testing Protocol

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, 17x100m

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.

EXHIBIT C

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EXHIBIT C
Examples of Products Primarily Intended For Use By Children

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.

EXHIBIT D

EXHIBIT D
Lip and Rim Protocol

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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 reapproval. A superscript epsilon (ϵ) indicates an editorial change since the last revision or reapproval.

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 enamels. 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 Inter-agency Task Force consisting of FDA, EPA, and CPSC of the U.S. Government. Current edition approved Jan. 23, 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 Belling 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.

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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.

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, 0.3, 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. Mark each article, 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 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 container, 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 microgram 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.

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 *Analyst Standards for Laboratory Chemicals*, BDH Ltd., Poole, Dorset, U.K., and the *United States Pharmacopoeia and National Formulary*, U.S. Pharmacopoeial Convention, Inc. (USPC), Rockville, MD.*

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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 microgram 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 glass; 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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EXHIBIT E

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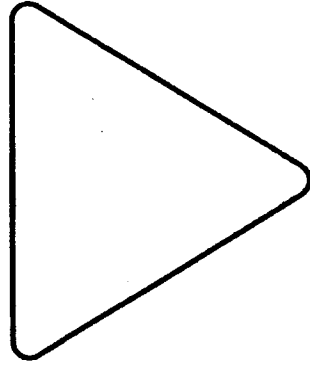
EXHIBIT E

Combined Point of Sale Warnings [Yellow Triangle]

PROP 65 WARNING

Consuming foods or beverages that have been kept or served in leaded crystal products, or in certain ceramic tableware products, or certain glassware products with colored decorations on the exterior will expose you to lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

The products for which this warning is given are identified with this symbol:



displayed on or next to the product.

EXHIBIT F

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EXHIBIT F
Combined Point of Sale Warnings

PROP 65 WARNING

Use of the following ceramic tableware products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm: [List each manufacturer and pattern name for which a warning is given].

The materials used as colored decorations on the exterior of the following glassware products sold in this store contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm: [List each manufacturer and pattern name for which a warning is given].

Consuming foods or beverages that have been kept or served in leaded crystal products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. [If any of the following products are sold, include: "This warning does not apply to Baccarat decanters, flacons, stoppered pitchers, mustard and jam pots."]

EXHIBIT G

EXHIBIT G

Warning sign for restaurants/bars/food service entities

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PROP 65

WARNING

The materials used as colored decorations on the exterior of the following glassware products used or sold in this establishment contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm:

PROP 65

WARNING

The materials used as colored decorations on the exterior of glassware products used or sold in this establishment contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.

EXHIBIT H

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EXHIBIT H

Parties to whom notice is to be given

Party Name: ARC International N.A., Inc.
Contact Person: Tim Bell

Mailing address: Wade Blvd., PO Box 5001
Milville, New Jersey 08332-5001

Telephone: 856-825-5620 (x3319)
Fax number: 856-825-7142

Email address: BELL@ARC-INTERNATIONAL.com

With a Copy to:

Robert L. Falk
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
415-268-7000 (tel.)
415-268-7522 (fax)
Rfalk@mofocom (email)

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EXHIBIT H

Parties to whom notice is to be given

Party Name: Anchor Hocking
Contact Person: President

Mailing address: 519 Pierce Avenue
Lancaster, Ohio 43130

Telephone: 740-681-6478
Fax number: 740-681-6040

With a Copy to:
Robert L. Falk
Morrison & Foerster LLP
425 Market Street
San Francisco, CA 94105
415-268-7000 (tel.)
415-268-7522 (fax)
Rfalk@mofocom.com (email)

EXHIBIT H

Parties to whom notice is to be given

Party Name: **BIG LOTS STORES, INC.**
PNS STORES, INC.

Contact Person: **William MacBeth, III.**

Mailing address: **300 Phillipi Road**
Columbus, OH 43228

Telephone: **(614) 278-6769**
Fax number: **(614) 278-6763**

Email address: **WMacbeth@biglots.com**

Contact Person: **Michael E. Delehunt**
Foley & Lardner LLP

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San Francisco, California 94111

Telephone: **415.434.4484**
Fax number: **415.434.4507**

Email address: **MDelehunt@foley.com**

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EXHIBIT H

Parties to whom notice is to be given

Party Name: Cost Plus, Inc.

Contact Person: John Luttrell

Mailing address: 200 Fourth Street

Oakland, CA 94607

Telephone: 510-893-7300

Fax number: 510-893-3084

Email address: john.luttrell@cpwm.com

EXHIBIT H

Parties to whom notice is to be given

Party Name: Grate & Bartel

Contact Person: Judith M. Praitis, Esq.

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Los Angeles, CA 90013-1010

Telephone: (213) 896-6637

Fax number: (213) 896-6600

Email address: jpraitis@sidley.com

EXHIBIT H

Parties to whom notice is to be given

Party Name: Gibson Overseas, Inc.

Contact Person: Trenton H. Norris

Mailing address: Bingham McCutchen LLP
3 Embarcadero Center, Ste. 1800
San Francisco, CA 94111

Telephone: 415-393-2000

Fax number: 415-393-2286

Email address: trent.norris@bingham.com

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EXHIBIT H

Parties to whom notice is to be given

Party Name: Gottschalks Inc.

Contact Person: James M. Cipolla
General Counsel

Mailing address: 7 River Park Place East
P.O. Box 28920
Fresno, CA 93720

Telephone: (559) 434-4779
Fax number: (559) 434-4666

Email address: jim.cipolla@gottschalks.com

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EXHIBIT H

Parties to whom notice is to be given

Party Name: HOME ESSENTIAL + BEYOND INC

Contact Person: RUBEN KENIGSBERG

Mailing address: 301 WOODBRIDGE AVE.
EDISON, NJ 08837

Telephone: 732-590-3600 x 228

Fax number: 732-590-3666

Email address: RK@HEANDB.COM

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EXHIBIT H

Parties to whom notice is to be given

Party Name: KOMODO INTERNATIONAL CORP./BALI

Contact Person: BUDI MULYONO-LIM

Mailing address: 18405 S. SANTA FE AVE.,
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Telephone: 310-639-8889

Fax number: 310-639-8868

Email address: bmlim@komodointernational.com

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EXHIBIT H

Parties to whom notice is to be given

Party Name: Libbey Glass, Inc.

Contact Person: A. H. Smith, Esq.
Vice President and General Counsel

Mailing address: P. O. Box 10060
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Telephone: 419.325.2111
Fax number: 419.325.2585

Email address: smithah@libbey.com

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EXHIBIT H

Parties to whom notice is to be given

Party Name: Linens 'N Things, Inc.

Contact Person: Denise Tolles,
Vice-President of Legal Services

Mailing address: 6 Brighton Road
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Fax number: (973) 815-2998

Email address: Dtolles@lnt.com

EXHIBIT H

For Defendant Mervyn's:

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With a copy to

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For Defendants Target Corporation and Associated Merchandising Corporation:

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With a copy to:

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For Defendants Federated Department Stores, Inc. and Macy's West, Inc.:

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Federated Dept. Stores, Inc.
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For Defendant The Disney Store, Inc.:

Head of Litigation Department
The Disney Store, Inc.
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EXHIBIT H

Parties to whom notice is to be given

Party Name: Ross Stores, Inc.

Contact Person: Ken Jew, Esq.
Corporate Compliance Counsel

Mailing address: 8333 Central Avenue
Newark, CA 94560

Telephone: 510-505-4400
Fax number: 510-505-4189

Email address: ken.jew@ros.com

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EXHIBIT H
Parties to whom notice is to be given

Party Name: Spencer Gifts LLC

Contact Person: Ronald Mangel

Mailing address: 6826 Black Horse Pike
Egg Harbor Township,
New Jersey, 08234

Telephone: 609-645-5510

Fax number: 609-645-5409

Email address: ronald.mangel@spencergifts.com

Stipulation and [proposed] Order Re: Consent Judgment

EXHIBIT H

Parties to whom notice is to be given

Party Name: Tabletops Unlimited, Inc.

Contact Person: Masoud Tehrani

Mailing address: 23000 Avalon Blvd.
Carson, CA 90745-5017

Telephone: (310) 549-6000

Fax number: (310) 549-8500

Email address: _____