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ENDORSED
FILED
San Francisco County Superior Court

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SEP 15 2005
GORDON PARK-LI, Clerk
BY: S. PENG
Deputy Clerk

12 Attorneys for Plaintiff
13 WHITNEY R. LEEMAN, Ph.D.

14 ROBERT L. FALK (S.B. NO. 142007)
15 WILLIAM F. TARANTINO (BAR NO. 215343)
16 MILES H. IMWALLE (BAR NO. 230244)
17 MORRISON & FOERSTER LLP
18 425 Market Street
19 San Francisco, California 94105 2482
20 Tel: (415) 268 7000
21 Fax: (415) 268-7522

22 Attorneys for Defendant
23 PRECIDIO, INC.

24 SUPERIOR COURT OF THE STATE OF CALIFORNIA
25 COUNTY OF SAN FRANCISCO, UNLIMITED CIVIL JURISDICTION

26 WHITNEY R. LEEMAN, Ph.D.,)
27)
28 Plaintiff,)
29)
30 v.) ~~PROPOSED~~ ORDER APPROVING
31) PROPOSITION 65 SETTLEMENT AND
32) CONSENT JUDGMENT
33)
34 PRECIDIO, INC., and DOES 1 through 150,)
35) Date: September 15, 2005
36) Time: 9:30 am
37) Dept: 301
38) Judge: Hon. James L. Warren
39) Trial Date: None set
40) Date Filed: December 6, 2004

[Proposed] Order Approving Proposition 65 Settlement And Consent Judgment
Case No. CGC-04-436841

1 Plaintiff WHITNEY R. LEEMAN, Ph.D. and Defendant PRECIDIO, INC., having agreed
2 through their respective counsel that judgment be entered pursuant to the terms of the Consent
3 Judgment entered into by the above-referenced parties and attached hereto as Exhibit 1; and after
4 consideration of the papers submitted and the arguments presented, the Court finds that the
5 settlement agreement set out in the attached Consent Judgment meets the criteria established by
6 Health & Safety Code section 25249.7, in that:

- 7 1. The health hazard warning that is required by the Consent Judgment complies with
8 Health & Safety Code section 25249.7;
- 9 2. The reimbursement of fees and costs to be paid pursuant to the parties' Consent
10 Judgment is reasonable under California law; and
- 11 3. The civil penalty amount to be paid pursuant to the parties' Consent Judgment is
12 reasonable.
13

14 Accordingly, IT IS HEREBY ORDERED that Judgment be entered in the case referenced
15 above, in accordance with the terms of the Consent Judgment, attached hereto as Exhibit 1.
16

17
18 Dated: SEP 15 2005, 2005

JAMES L. WARREN
19 Hon. James L. Warren
20 Judge of the San Francisco Superior Court
21
22
23
24
25
26

Exhibit A

1 CLIFFORD A. CHANLER (State Bar No. 135534)
CHANLER LAW GROUP
2 71 Elm Street, Suite 8
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4

5 Attorneys for Plaintiff
Whitney R. Leeman

6 ROBERT L. FALK (State Bar No. 142007)
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425 Market Street
8 San Francisco, California 94105-2482
Telephone: (415) 268-7000
9 Facsimile: (415) 268-7522

10 Attorneys for Defendant
Precidio, Inc.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF SAN FRANCISCO
14 UNLIMITED JURISDICTION
15

16 WHITNEY R. LEEMAN,
17 Plaintiff,
18 v.
19 PRECIDIO, INC. and DOES 1 through 50,
20 Defendants.

Case No. CGC 04-436841

CONSENT JUDGMENT

21 **1. INTRODUCTION**

22 1.1 **Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and
23 between plaintiff Whitney R. Leeman (hereafter "Leeman" or "Plaintiff") and Precidio, Inc.
24 (hereafter "Precidio"), with Plaintiff and Precidio collectively referred to as the "Parties" and
25 Leeman and Precidio each being a "Party."

26 1.2 **Plaintiff.** Leeman is an individual residing in California who seeks to promote
27 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating
28 hazardous substances contained in consumer and industrial products.

1 1.3 **General Allegations.** Plaintiff alleges that Precidio has manufactured, distributed
2 and/or sold in the State of California glass sets, drinking glasses, and other tableware products
3 with colored artwork, designs or markings on the exterior surface with materials in that colored
4 artwork, designs or markings that contain cadmium, lead and/or lead compounds, which are listed
5 pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
6 Safety Code §§ 25249.5 et seq., also known as Proposition 65, to cause cancer and birth defects
7 and other reproductive harm. Lead (and/or lead compounds) and cadmium shall be referred to
8 herein as "Listed Chemicals."

9 1.4 **Product Descriptions.** The products that are covered by this Consent Judgment
10 are defined as follows: glassware products manufactured, sold and/or distributed in California by
11 Precidio with colored artwork, designs or markings on the exterior surface including, by way of
12 example and without limitation, glassware products contained in the items listed at Exhibit A.
13 Such products collectively are referred to herein as the "Products."

14 1.5 **Notices of Violation.** Beginning on September 3, 2004, Leeman served Precidio
15 and various public enforcement agencies with documents, entitled "60-Day Notice of Violation"
16 ("Notice") that provided Precidio and such public enforcers with notice that alleged that Precidio
17 was in violation of Health & Safety Code § 25249.6 for failing to warn purchasers that certain
18 products that it sold expose users in California to cadmium, lead and lead compounds.

19 1.6 **Complaint.** On December 6, 2004, Leeman, in the interest of the general public
20 in California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the
21 Superior Court for the City and County of San Francisco against Precidio and Does 1 through 50,
22 alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to one or
23 more of the Listed Chemicals contained in certain products sold by Precidio.

24 1.7 **No Admission.** Precidio denies the material factual and legal allegations
25 contained in Plaintiff's Notices and Complaint and maintains that all products that it has sold and
26 distributed in California including the Products have been and are in compliance with all laws.
27 Nothing in this Consent Judgment shall be construed as an admission by Precidio of any fact,
28 finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or

1 be construed as an admission by Precidio of any fact, finding, conclusion, issue of law or
2 violation of law. However, this section shall not diminish or otherwise affect the obligations,
3 responsibilities and duties of Precidio under this Consent Judgment.

4 **1.8 Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
5 stipulate that this Court has jurisdiction over the allegations of violations contained in the
6 Complaint and personal jurisdiction over Precidio as to the acts alleged in the Complaint, that
7 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
8 Consent Judgment and to enforce the provisions thereof.

9 **1.9 Effective Date.** For purposes of this Consent Judgment, "Effective Date" shall be
10 30 days after this Consent Judgment is entered by the Court.

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

12 **2.1 Warning Obligations for Products**

13 **(a) Required Warnings.** After the Effective Date, Precidio shall not transmit
14 to any retailer to sell or offer for sale in California any Products containing the Listed Chemicals,
15 unless warnings are given in accordance with one or more provisions in subsection 2.2 below.

16 **(b) Exceptions.** The warning requirements set forth in subsections 2.1(a) and
17 2.2 below shall not apply to:

18 (i) any Products manufactured before the Effective Date, or

19 (ii) Reformulated Products.

20 **2.2 Clear and Reasonable Warnings**

21 **(a) Product Labeling.** A warning is affixed to the packaging, labeling or
22 directly to or on a Product by Precidio, its agent, or the manufacturer, importer, or distributor of
23 the Product that states:

24 **WARNING: The materials used as colored decorations on the**
25 **exterior of this product contain lead and**
26 **cadmium, chemicals known to the State of**
27 **California to cause birth defects or other**
28 **reproductive harm.**

or

1 **WARNING: The materials used as colored decorations on the**
2 **exterior of the following products contain lead**
3 **and/or cadmium, chemicals known to the State**
4 **of California to cause birth defects or other**
5 **reproductive harm.**

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

13 (b) **Point-of-Sale Warnings.** Precidio may execute its warning obligations,
14 where applicable, through arranging for the posting of signs at retail outlets in the State of
15 California at which Products are sold, in accordance with the terms specified in
16 subsections 2.2(b)(i), 2.2(b)(ii) and 2.2(b)(iii).

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

19 **WARNING: The materials used as colored decorations on the**
20 **exterior of this product contain lead and**
21 **cadmium, chemicals known to the State of**
22 **California to cause birth defects or other**
23 **reproductive harm.**

24 or

25 **WARNING: The materials used as colored decorations on the**
26 **exterior of tableware products sold in this store**
27 **contain lead and cadmium, chemicals known to**
28 **the State of California to cause birth defects or**
 other reproductive harm.¹

 or

¹ This formulation of the warning may only be used where the store in which the Products are sold sells only non-Reformulated Products, as such phrase is defined in Section 2.3.

1 **WARNING: The materials used as colored decorations on the**
2 **exterior of the following tableware products sold**
3 **in this store contain lead and cadmium,**
4 **chemicals known to the State of California to**
5 **cause birth defects or other reproductive harm.**

6 (ii) A point of sale warning provided pursuant to subsection 2.2(b)(i)
7 shall be prominently placed with such conspicuousness as compared with other words,
8 statements, designs, or devices as to render it likely to be read and understood by an ordinary
9 individual under customary conditions of use or purchase and shall be placed or written in a
10 manner such that the consumer understands to which *specific* Products the warnings apply so as
11 to minimize if not eliminate the chances that an overwarning situation will arise. Any changes to
12 the language or format of the warning required for Products by this subsection shall only be made
13 following: (1) approval of Plaintiff; (2) approval from the California Attorney General's Office,
14 provided that written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to
15 comment; or (3) Court approval.

16 (iii) If Precidio intends to utilize point of sale warnings to comply with
17 this Consent Judgment, it must provide notice as required by this Consent Judgment to each
18 retailer to whom Precidio ships the Products for sale in California and obtain the written consent
19 of such retailer before shipping the Products. Such notice shall include a copy of this Consent
20 Judgment and any required warning materials (including, as appropriate, signs and/or stickers). If
21 Precidio has obtained the consent of a retailer, Precidio shall not be found to have violated this
22 Consent Judgment if it has complied with the terms of this Consent Judgment and has proof that
23 it transmitted the requisite warnings in the manner provided herein.

24 **2.3 Reformulation Standards.** Products satisfying the conditions of section 2.3(a) or
25 2.3(b) are referred to as "Reformulated Products."

26 (a) If the colored artwork, designs or markings on the exterior surface of the
27 Product does not extend into the top 20 millimeters of the ware (*i.e.*, only appears below the
28 exterior portion of the lip and rim area as defined by American Society of Testing and Materials
Standard Test Method C927-99, hereinafter the "Lip and Rim Area"), produce a test result no
higher than 1.0 micrograms (ug) of lead or 4.0 ug of cadmium using a Ghost Wipe™ test

1 applied on painted portions of the surface of the Product performed as outlined in NIOSH method
2 no. 9100, such Product is a Reformulated Product; or

3 (b) If the Product utilizes paints for all colored artwork, designs or markings
4 containing six one-hundredths of one percent (0.06%) lead or cadmium by weight or less as
5 measured at Precidio's option, either before or after the material is fired onto (or otherwise
6 affixed to) the Product, using EPA Test Method 3050b, such Product is a Reformulated Product;

7 **2.4 Reformulation Commitment.** By entering into this Stipulation and Consent
8 Judgment, Precidio hereby commits that as a continuing matter of corporate policy, Precidio
9 intends to undertake good faith efforts, taking into consideration Precidio's operational and
10 product licensing restrictions, to ensure that as many Products as reasonably possible shall qualify
11 as Reformulated Products, with the commitment to reach 80% (eighty percent) or more
12 Reformulated Products for Products manufactured on or after June 1, 2005 and the commitment
13 to make commercially reasonable efforts thereafter to reach 100% (one-hundred percent)
14 Reformulated Products.

15 **3. MONETARY PAYMENTS.**

16 3.1 In settlement of all of the claims referred to in this Consent Judgment against the
17 Settling Defendant, Precidio shall pay:

18 (a) \$20,000 in civil fines to be apportioned by Plaintiff in accordance with
19 Health & Safety Code § 25192, with 75% of these funds remitted to the State of California's
20 Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty
21 monies retained by Plaintiff as provided by Health & Safety Code § 25249.12(d). Plaintiff shall
22 bear all responsibility for apportioning and paying to the State of California the appropriate civil
23 penalties paid in accordance with this section; and

24 (b) \$32,000 to the Public Health Trust in lieu of a civil penalty pursuant to
25 California Code Regulations, tit. 11 section 3203 subd. (b) to provide grants to national, statewide
26 and local health protection and promotion programs. The method of selection of the ultimate
27 recipient of the settlement funds is set forth in the "Policy Guidelines for the Public Health Trust"
28 available at <http://www.publichealthtrust.org>.

1 3.2 **Payment Schedule.** The payment set forth in this paragraph shall be made on or
2 before February 28, 2005, and be delivered to Plaintiff's counsel at the following address:

3 CHANLER LAW GROUP
4 Attn: Clifford A. Chanler
5 71 Elm Street, Suite 8
6 New Canaan, CT 06840

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

8 4.1 The Parties acknowledge that Plaintiff and her counsel offered to resolve this
9 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
10 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
11 Precidio then expressed a desire to resolve the fee and cost issue shortly after the other settlement
12 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
13 compensation due to Plaintiff and her counsel under the private attorney general doctrine codified
14 at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date of the
15 Agreement. Under the private attorney general doctrine, Precidio shall reimburse Plaintiff and
16 her counsel for fees and costs, incurred as a result of investigating, bringing this matter to
17 Precidio's attention, litigating and negotiating a settlement in the public interest. Precidio shall
18 pay Plaintiff and his counsel \$48,000 for all attorneys' fees, expert and investigation fees, and
19 litigation costs. The payment shall be made payable to the "Chanler Law Group" and shall be
20 delivered to Plaintiff's counsel on or before February 28, 2005, at the following address:

21 CHANLER LAW GROUP
22 Attn: Clifford A. Chanler
23 71 Elm Street, Suite 8
24 New Canaan, CT 06840

25 Except as specifically provided in this Consent Judgment, Precidio shall have no further
26 obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with regard to the
27 Products covered in this Action.
28

1 **5. RELEASE OF ALL CLAIMS**

2 5.1 **Plaintiff's Release of Precidio.** In further consideration of the promises and
3 agreements herein contained, and for the payments to be made pursuant to sections 3 and 4,
4 Plaintiff, on behalf of herself, her past and current agents, representatives, attorneys, successors
5 and/or assignees, and in the interest of the general public, hereby waives all rights to institute or
6 participate in, directly or indirectly, any form of legal action and release all claims, including,
7 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
8 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
9 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
10 unknown, fixed or contingent (collectively "Claims"), against Precidio and each of its
11 manufacturers, distributors, wholesalers, licensors, licensees, auctioneers, retailers, dealers,
12 customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries and
13 their respective officers, directors, attorneys, representatives, shareholders, agents, and employees
14 (collectively, "Precidio Releasees") arising under Proposition 65, Business & Professions Code
15 § 17200 *et seq.* and Business & Professions Code § 17500 *et seq.*, related to Precidio's or
16 Precidio Releasees' alleged failure to warn about exposures to or identification of Listed
17 Chemicals contained in the Products sold by Precidio.

18 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
19 binding resolution of any violation of Proposition 65, Business & Professions Code §§ 17200
20 *et seq.* and Business & Professions Code §§ 17500 *et seq.*, that have been or could have been
21 asserted in the Complaints against Precidio for its alleged failure to provide clear and reasonable
22 warnings of exposure to or identification of Listed Chemicals in the Products sold by Precidio.

23 In addition, Plaintiff, on behalf of herself, her attorneys, and their agents, waive all rights
24 to institute or participate in, directly or indirectly, any form of legal action and releases all Claims
25 against the Precidio Releasees arising under Proposition 65, Business & Professions Code
26 §§ 17200 *et seq.* and Business & Professions Code §§ 17500 *et seq.*, related to each of the
27 Precidio Releasees' alleged failures to warn about exposures to or identification of Listed
28 Chemicals contained in the Products and for all actions or statements made by Precidio or its

1 attorneys or representatives, in the course of responding to alleged violations of Proposition 65,
2 Business & Professions Code §§ 17200 *et seq.* or Business & Professions Code §§ 17500 *et seq.*
3 by Precidio. Provided however, Plaintiff shall remain free to institute any form of legal action to
4 enforce the provisions of this Consent Judgment.

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

11 5.2 **Precidio's Release of Plaintiff.** Precidio waives all rights to institute any form of
12 legal action against Plaintiff, or her attorneys or representatives, for all actions taken or
13 statements made by Plaintiff and her attorneys or representatives, in the course of seeking
14 enforcement of Proposition 65, Business & Professions Code §§ 17200 *et seq.* or Business &
15 Professions Code §§ 17500 *et seq.* in this Action.

16 6. COURT APPROVAL

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

22 7. SEVERABILITY

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

26 8. ATTORNEYS' FEES

27 In the event that a dispute arises with respect to any provision(s) of this Consent
28 Judgment, the prevailing party shall, except as otherwise provided herein, be entitled to recover

1 reasonable and necessary costs and reasonable attorneys' fees incurred from the resolution of
2 such dispute.

3 **9. GOVERNING LAW**

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

9 **10. NOTICES**

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

15 Chanler Law Group
16 71 Elm Street, Suite 8
New Canaan, CT 06840

15 Robert L. Falk
16 Morrison & Foerster LLP
425 Market Street
17 San Francisco, CA 94105-2482

18 **11. NO ADMISSIONS**

19 Nothing in this Consent Judgment shall constitute or be construed as an admission by
20 Precidio of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance
21 with this Consent Judgment constitute or be construed as an admission by Precidio of any fact,
22 finding, conclusion, issue of issue of law, or violation of law, such being specifically denied by
23 Precidio. Precidio reserves all of its rights and defenses with regard to any claim by any party
24 under Proposition 65 or otherwise. However, this section shall not diminish or otherwise affect
25 Precidio's obligations, responsibilities and duties under this Consent Judgment.
26
27
28

1 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

5 **13. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

13 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

14 The Parties shall mutually employ their best efforts to support the entry of this Agreement
15 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely
16 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed
17 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties
18 agree to file a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of which
19 Precidio's counsel shall prepare, within a reasonable period of time after the Execution Date (*i.e.*,
20 not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based on
21 unanticipated circumstances). Plaintiff's counsel shall prepare a declaration in support of the
22 Joint Motion which shall, *inter alia*, set forth support for the fees and costs to be reimbursed
23 pursuant to Section 4. Precidio shall have no additional responsibility to Plaintiff's counsel
24 pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and costs
25 incurred with respect to the preparation and filing of the Joint Motion and its supporting
26 declaration or with regard to Plaintiff's counsel appearing for a hearing or related proceedings
27 thereon.

15. MODIFICATION

This Consent Judgment may be modified, including pursuant to section 2.3(c) above, only by: (1) written agreement of the Parties and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party as provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days in advance of its consideration by the Court.

16. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 7/16/05

Date:

By: Whitney R. Leeman
Plaintiff Whitney R. Leeman

By: Defendant Precidio, Inc.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: CHANLER LAW GROUP

Date: MORRISON & FOERSTER LLP

By: Clifford A. Chafler
Attorneys for Plaintiff
WHITNEY R. LEEMAN

By: Robert L. Falk
Attorneys for Defendant
PRECIDIO, INC.

IT IS SO ORDERED.

Date:

JUDGE OF THE SUPERIOR COURT

1 15. MODIFICATION

2 This Consent Judgment may be modified, including pursuant to section 2.3(e) above, only
3 by: (1) written agreement of the Parties and upon entry of a modified Consent Judgment by the
4 Court thereon, or (2) motion of any Party as provided by law and upon entry of a modified
5 Consent Judgment by the Court. The Attorney General shall be served with notice of any
6 proposed modification to this Consent Judgment at least fifteen (15) days in advance of its
7 consideration by the Court.

8 16. AUTHORIZATION

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

12 AGREED TO:

AGREED TO:

13 Date: _____

Date: _____

14
15 By: _____
Plaintiff Whitney R. Leeman


By: _____
Defendant Precidio, Inc.

16
17 APPROVED AS TO FORM:

APPROVED AS TO FORM:

18 Date: _____
19 CHANLER LAW GROUP

Date: _____
MORRISON & FOERSTER LLP

20 By: 
21 Clifford A. Chanler
22 Attorneys for Plaintiff
WHITNEY R. LEEMAN

By: _____
Robert L. Falk
Attorneys for Defendant
PRECIDIO, INC.

23
24 IT IS SO ORDERED.

25
26 Date: _____

JUDGE OF THE SUPERIOR COURT

28

1 **15. MODIFICATION**

2 This Consent Judgment may be modified, including pursuant to section 2.3(e) above, only
3 by: (1) written agreement of the Parties and upon entry of a modified Consent Judgment by the
4 Court thereon, or (2) motion of any Party as provided by law and upon entry of a modified
5 Consent Judgment by the Court. The Attorney General shall be served with notice of any
6 proposed modification to this Consent Judgment at least fifteen (15) days in advance of its
7 consideration by the Court.

8 **16. AUTHORIZATION**

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

12 **AGREED TO:**

AGREED TO:

13 Date: _____

Date: _____

14
15 By: _____
Plaintiff Whitney R. Leeman

14
15 By: _____
Defendant Precidio, Inc.

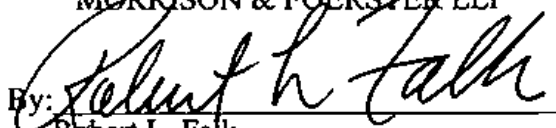
16
17 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

18 Date: _____
19 CHANLER LAW GROUP

18 Date: 2/27/05
19 MORRISON & FOERSTER LLP

20 By: _____
21 Clifford A. Chanler
22 Attorneys for Plaintiff
WHITNEY R. LEEMAN

20 By:  _____
21 Robert L. Falk
22 Attorneys for Defendant
PRECIDIO, INC.

23
24 **IT IS SO ORDERED.**

25
26 Date: _____

JUDGE OF THE SUPERIOR COURT

27
28

1 **15. MODIFICATION**

2 This Consent Judgment may be modified, including pursuant to section 2.3(e) above, only
3 by: (1) written agreement of the Parties and upon entry of a modified Consent Judgment by the
4 Court thereon, or (2) motion of any Party as provided by law and upon entry of a modified
5 Consent Judgment by the Court. The Attorney General shall be served with notice of any
6 proposed modification to this Consent Judgment at least fifteen (15) days in advance of its
7 consideration by the Court.

8 **16. AUTHORIZATION**

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

12 **AGREED TO:**
13 Date: _____
14
15 By: _____
16 Plaintiff Whitney R. Leeman

AGREED TO:
Date: Feb 28, 2005
By: [Signature]
Defendant Precidio, Inc.

17 **APPROVED AS TO FORM:**
18 Date: _____
19 CHANLER LAW GROUP
20
21 By: _____
22 Clifford A. Chanler
23 Attorneys for Plaintiff
24 WHITNEY R. LEEMAN

APPROVED AS TO FORM:
Date: _____
MORRISON & FOERSTER LLP
By: _____
Robert L. Falk
Attorneys for Defendant
PRECIDIO, INC.

24 **IT IS SO ORDERED.**
25
26 Date: _____

JUDGE OF THE SUPERIOR COURT

1 **Exhibit A**

2 All glass sets, glasses, mugs, bowls, and tableware with colored designs and/or artwork on the
3 exterior, including but not limited to:

- 4 19TH HOLE DOF-GLS
5 19TH HOLE DOF-GLS
6 19TH HOLE JUM-GLS
7 19TH HOLE JUM-GLS
8 19TH HOLE MARTINI SHAKER
9 19TH HOLE MARTINI SHAKER
10 A CATS LIFE BLUE
11 A CATS LIFE BLUE
12 A CATS LIFE BLUE
13 A CATS LIFE BLUE
14 A CATS LIFE GLS GB S/4
15 A CATS LIFE GLS GB S/4
16 A CATS LIFE GLS GB S/4
17 A CATS LIFE GREEN
18 A CATS LIFE GREEN
19 A CATS LIFE GREEN
20 A CATS LIFE GREEN
21 A CATS LIFE JUICE GLS ASSMT
22 A CATS LIFE ORANGE
23 A CATS LIFE ORANGE
24 A CATS LIFE ORANGE
25 A CATS LIFE ORANGE
26 A CATS LIFE YELLOW
27 A CATS LIFE YELLOW
28 A CATS LIFE YELLOW
A CATS LIFE YELLOW
A DOGS LIFE GLS GB S/4
A DOGS LIFE GLS GB S/4
A DOGS LIFE JUICE GLS ASSMT
A KISS CL.MARTINI
A KISS CL.MARTINI
A KISS CL.MARTINI
A KISS MARTINI SHAKER
A KISS MARTINI SHAKER
ANIMAL FARM JUICE GLS ASSMT
ANIMAL FARM JUICE GLS S/4
ANIMAL FLOWERS GLS GB S/4
ANIMAL FLOWERS JUICE GL ASS
APPLE-FRUIT SALAD GLS
APPLES & PEARS RED WINE S/4
APPLES & PEARS WATR GOB S/4
APPLES & PEARS WH WINE S/4
ARCADE GLS ASSMT
ARCADE GLS GB S/4
BABY SERIES GLS ASSMT
BABY SERIES GLS GB S/4

- 1 BAR WORLD CL.MARTINI
- BAR WORLD SHAKER
- 2 BARWORLD MARTINIS FOR 2
- BEE JUICE GLS
- 3 BEER(RETRO)15OZ STEIN
- BOMBAY DOF-GLS
- 4 BOMBAY JUM-GLS
- BOO JUICE GLS ASSMT
- 5 BOO JUICE GLS GB S/4
- 6 BUGS JUICE GLS ASSMT
- BUGS JUICE GLS GB S/4
- 7 BULLS EYE BK-WH CL.MARTINI
- BULLS EYE BK-WH JUM-GLS
- 8 BULLS EYE BK-WH MARTINI SHK
- BUTTERFLY JUICE GLS
- 9 CAN CAN SANTAS GLS ASSMT
- CAN CAN SANTAS GLS GB S/4
- 10 CAN CAN SANTA'S MUG
- CANAPES CL.MARTINI
- 11 CANAPES CL.MARTINI
- CANAPES MARTINI SHAKER
- 12 CANAPES MARTINIS FOR 2
- CANAPES MARTINIS FOR 2
- 13 CANAPES RED WINE S/4
- CANAPES WATER GOBLET S/4
- 14 CANAPES WHITE WINE S/4
- CANDY CANE
- 15 CANDY CANE ICE IRISH COFFEE
- CARBON NATION JM FR-GLS ASST
- 16 C'EST BON VIN RED WINE S/4
- C'EST BON VIN WHITE WINE S/4
- 17 CHAINLINK DOF-GLS ASSMT
- 18 CHAINLINK MARTINI SHAKER
- CHILL-GLASS ICE BUCKET
- 19 CHRISTMAS TREE
- CHROME PLATE STAND W/BARTOOLS
- 20 CLASSIC COCKTAILS CL.MARTINI
- CLASSIC COCKTAILS DOF-GLS
- 21 CLASSIC COCKTAILS JUM-GLS
- CLASSIC COCKTAILS SHAKER
- 22 CLEAR COSMOPOLITAN
- 23 CLEAR MARTINI SHAKER
- COCKTAIL GARNISH MARTINI FOR 2
- 24 COCKTAIL GARNISHES CL.MART
- COCKTAIL GARNISHES CL.MART-4PK
- 25 COCKTAIL GARNISHES CL.MARTINI
- COCKTAIL GARNISHES CL.MARTINI
- 26 COCKTAIL GARNISHES COSMO ASSMT
- COCKTAIL GARNISHES ICE BUCKET
- 27 COCKTAIL GARNISHES MRT.SHKR
- 28 COCKTAIL GARNISHES SHAKER-1 PK

1 COCKTAIL GARNISHES STM MARTINI
COCKTAILS COSMOPOLITAN
2 COCKTAILS COSMOPOLITAN MARTINI
COCKTAILS MARTINI SHAKER
3 COCKTAILS MARTINI SHAKER
COCKTAILS MARTINIS FOR 2
4 COCKTAILS MARTINIS FOR 2
COCKTAILS VINYL I/BCKT W/TONG
5 COCKTAILS VINYL I/BCKT W/TONG
COCKTAILS VINYL ICE BUCKET
6 COCKTAILS W/TOOLS SHAKER
COCKTAILS W/TOOLS SHAKER
7 COSMO DRINK CADDY W/4 COSMOS
8 COSMO DRINK CADDY W/4 COSMOS
COSMO DRINK CADDY W/4 COSMOS
9 COSMO DRINK CADDY W/4 COSMOS
COSMOS DRINK CADD.MARTINI SHKR
10 COSMOS MARTINIS FOR 2
COUTURE SHOE DOF GLS
11 COW JUICE GLS
DATING GAME COSMOPOLITAN
12 DATING GAME DOF FR-GLS
DATING GAME MARTINI SHAKER
13 DISCO FEVER COSMOPOLITAN
DISCO FEVER MARTINI SHAKER
14 DISCO FEVER MARTINIS FOR 2
DISCO-FEVER MARTINIS FOR 2
15 DOF HB 11OZ CLR 1P PPK
DOGS PROMENAD DOF-GLS
16 DOGS PROMENAD JUM-GLS
DOTS FROST CL.MARTINI
17 DOTS FROST MARTINI SHAKER
DOTS PLUM DOF-GLS
18 DOTS PLUM JUM-GLS
DRINKING SANTAS COSMO S/4
19 DRINKING SANTAS DOF GLS SET/4
DRINKING SANTAS JUM-GLS SET/4
20 DRINKING SANTAS SHAKER
EVENING MELODY DOF-GLS
21 EVENING MELODY DOF-GLS-4 PAK
EVENING MELODY JUM-GLS
22 EVENING MELODY JUM-GLS-4 PAK
FLUID OZ. MARTINI SHAKER
23 FLUID OZ. MARTINI SHAKER
FROSTED STRIPES PLUM DF-GLS
24 FROSTED STRIPES PLUM JM-GLS
FROSTY FRIENDS JUICE GB S/4
25 FROSTYS FRIENDS JUICE ASST
FROSTYS FRIENDS JUICE ASST
26 FROSTYS FRIENDS MUG ASSMT
27 FROSTYS FRIENDS MUG ASSMT
28

- 1 GERBER DAISIES DOF-GLS
- GERBER DAISIES JUM-GLS
- 2 GERBER DAISIES RED WINE S/4
- GERBER DAISIES WATR GBLT S4
- 3 GERBER DAISIES WH WINE S/4
- GOOD BEER(RETRO)15OZ STEIN
- 4 GRAPES RED WINE S/4
- GRAPES WATER GOBLET S/4
- 5 GRAPES WHITE WINE S/4
- GRAPES WHITE WINE S/4
- 6 HALLOWEEN CAT JUC GLS ASSMT
- HALLOWEEN CATS JUICE GLS GB
- 7 HALLOWEEN JUICE GLASS
- 8 HAPPY HOLIDAYS DOF FR-GLS
- HAPPY HOLIDAYS JUM FR-GLS
- 9 HAPPY HOUR JUM FR-GLS ASST
- HIGHBALL S/4 70'S STRIPE
- 10 HIGHBALL S/4 CIRCLES
- HIGHBALL S/4 LEMONADE
- 11 HIGHBALL S/4 MOSAIC
- HIGHBALL S/4 RETRO LABELS
- 12 HIGHBALL S/4 TWISTER
- HIPPITY HOP JUICE GLS
- 13 HOLLY RED WINE S/4
- HOLLY RED WINE S/4
- 14 HOLLY WATER GOBLET S/4
- HOLLY WHITE WINE S/4
- 15 HOLLY WHITE WINE S/4
- 16 JUICE LABELS GLS ASSMT
- JUICE LABELS GLS ASSMT
- 17 JUICE LABELS GLS GB S/4
- KALEIDOSCOPE DOF FR-GLS
- 18 KALEIDOSCOPE JUM FR-GLS
- LADY BUG JUICE GLS
- 19 LEAPING SANTA JUICE ASSMT
- LEAPING SANTA JUICE GB S/4
- 20 LEAPING SANTA MUG ASSMT
- LEMON TWIST COSMOPOLITAN
- 21 LET IT SNOW DOF FR-GLS
- LET IT SNOW JUM FR-GLS
- 22 LETTERS TO SANTA GLS ASSMT
- LETTERS TO SANTA GLS ASSMT
- 23 LETTERS TO SANTA GLS GB S/4
- LOUNGE LIZARD CL.MARTINI
- 24 LOUNGE LIZARD DOF-GLS
- LOUNGE LIZARD JUM-GLS
- 25 LOUNGE LIZARD MARTINI SHAKER
- LOUNGE LIZARD MARTINIS FOR 2
- 26 LOUNGE LIZARD MARTINIS FOR 2
- 27 LUSH LIFE RED WINE S/4
- LUSH LIFE STEM MARTINI
- 28

- 1 LUSH LIFE WHITE WINE S/4
- 2 MEOW JUICE GLS
- 3 MIDNIGHT MARTINI STEM MARTINI
- 4 MILK BOTTLES ASST
- 5 MILK BOTTLES GLS GB S/4
- 6 MOD SQUAD FLWRS GLS GB S/4
- 7 NORTH POLE GLS GB S/4
- 8 NORTH POLE JUICE GLS ASSMT
- 9 NORTH POLE MUG ASSMT
- 10 NORTHWOOD DOF-GLS ASSMT
- 11 OLIVE MARTINIS FOR 2
- 12 OLIVE MARTINIS FOR 2
- 13 OLIVE MARTINIS FOR 2
- 14 OLIVE MARTINIS FOR 2
- 15 OLIVE MARTINIS FOR 2
- 16 OLIVE STORY VINYL ICE BUCKET
- 17 OLIVE STORY VINYL ICE BUCKET
- 18 OLIVES COSMOPOLITAN
- 19 OLIVES COSMOPOLITAN
- 20 OLIVES COSMOPOLITAN
- 21 OLIVES COSMOPOLITAN
- 22 OLIVES COSMOPOLITAN
- 23 OLIVES MARTINI SHAKER
- 24 OLIVES MARTINI SHAKER
- 25 OLIVES MARTINI SHAKER
- 26 OLIVES MARTINI SHAKER
- 27 ORANGE-FRUIT SALAD GLS
- 28 PENGUINS JUICE GLS ASSMT
- 29 PENGUINS JUICE GLS GB S/4
- 30 PICK UP STICKS DOF-GLS
- 31 PICK-UP STICK MARTINI SHKR
- 32 PICK-UP STICKS CL.MARTINI
- 33 PICK-UP STICKS DOF-GLS ASST
- 34 PIG JUICE GLS
- 35 POOCHIE PORTRAITS JUICE GLS
- 36 RAINDROP DOF-GLS ASSMT
- 37 RAINDROP RVRSE DOF-GLS ASST
- 38 REINDEER
- 39 RETRO-MIX DESSERTS MUG
- 40 RETRO-MIX DESSERTS MUG
- 41 ROYAL FLUSH CL.MARTINI
- 42 ROYAL FLUSH CL.MARTINI
- 43 ROYAL FLUSH CL.MARTINI
- 44 ROYAL FLUSH CL.MARTINI
- 45 ROYAL FLUSH CL.MARTINI
- 46 ROYAL FLUSH COSMOPOLITAN
- 47 ROYAL FLUSH COSMOPOLITAN
- 48 ROYAL FLUSH COSMOPOLITAN
- 49 ROYAL FLUSH COSMOPOLITAN S/4
- 50 ROYAL FLUSH MARTINI SHAKER

- 1 ROYAL FLUSH MARTINI SHAKER
- 2 ROYAL FLUSH MARTINI SHAKER
- 3 ROYAL FLUSH MARTINI SHAKER
- 4 ROYAL FLUSH MARTINIS FOR 2
- 5 ROYAL FLUSH MARTINIS FOR 2
- 6 ROYAL FLUSH MARTINIS FOR 2
- 7 ROYAL FLUSH MARTINIS FOR 2
- 8 ROYAL FLUSH VINYL ICE BUCKET
- 9 ROYAL FLUSH VINYL ICE BUCKET
- 10 SANTA & HIS HELPER JUC GLS
- 11 SANTA REINDEER JUICE GB S/4
- 12 SANTA&HIS HELPERS GLS GB S/4
- 13 SANTAS REINDEER JUICE ASST
- 14 SANTAS REINDEER MUG
- 15 SANTA'S ROAD SIGNS GLS ASSMT
- 16 SANTA'S ROAD SIGNS GLS ASSMT
- 17 SANTA'S ROAD SIGNS GLS GBS/4
- 18 SEA LIFE GLS ASSMT
- 19 SEA LIFE GLS GB S/4
- 20 SEASON GREETINGS DOF FR-GLS
- 21 SEASON GREETINGS JUM FR-GLS
- 22 SHAKE SHAKE MARTINI SHAKER
- 23 SHEEP JUICE GLS
- 24 SHOT GLASSES DRINKING PANTS
- 25 SHOT GLASSES FORTUNES S/4
- 26 SHOT GLASSES LEMON AND LIME
- 27 SHOT GLASSES LIQUOUR SHOTS S/4
- 28 SHOT GLASSES MIXED PACK
- SKI PATROL COSMOPOLITAN
- SKI PATROL DOF-GLS
- SKI PATROL JUM-GLS
- SKI PATROL MARTINI SHAKER
- SKI PATROL MARTINIS FOR 2
- SKI PATROL MARTINIS FOR 2
- SKI PATROL MARTINIS FOR 2
- SKI PATROL MARTINIS FOR 2
- SMOOTHIES & DESSERT GLS ASST
- SNOWFLAKE ICE IRISH COFFE
- SNOWFLAKES BL COSMOPOLITAN
- SNOWFLAKES BL JUM-GLS
- SNOWFLAKES BL MARTINI SHAKER
- SNOWMAN
- SNOWMEN IRISH COFFE
- SS CHILLER WH INNER
- SS ICE BUCKET BLACK
- SS ICE BUCKET WH INNER
- STARS GOLD DOF-GLS
- STARS GOLD JUM-GLS
- STARS SILVER DOF-GLS
- STARS SILVER JUM-GLS
- STRIPES GLS GB S/4

- 1 SUPERNOVA DOF-GLS
- 2 SUPERNOVA DOF-GLS(36)
- 3 SUPERNOVA JUM-GLS
- 4 SUPERNOVA JUM-GLS(36)
- 5 TARGET CL.MARTINI ASSMT
- 6 THE RAT PACK DOF-GLS
- 7 THE RAT PACK JUM-GLS
- 8 THE RAT PACK SHAKER
- 9 THIRST AID DOF-GLS
- 10 THIRST AID DOF-GLS 36 PAK
- 11 THIRST AID JUM-GLS 36 PAK
- 12 TOOLS-IN-A-SHAKR W/TLS-SHKR
- 13 TOOLS-IN-A-SHK W/TOOLS-SHKR
- 14 TRAVELOGUE CL.MARTINI
- 15 TRAVELOGUE MARTINI SHAKER
- 16 TRICK OR TREAT JUICE ASSMT
- 17 TRICK OR TREAT JUICE ASSMT
- 18 TRICK OR TREAT JUICE GLS GB
- 19 VIVID GARDEN STEM MARTINI
- 20 VOGUE SILHOUETTE CL.MARTINI
- 21 VOGUE SILHOUETTE CL.MARTINI
- 22 VOGUE SILHOUETTE CL.MARTINI
- 23 VOGUE SILHOUETTE DOF-GLS
- 24 VOGUE SILHOUETTE DOF-GLS
- 25 VOGUE SILHOUETTE JUM-GLS
- 26 VOGUE SILHOUETTE JUM-GLS
- 27 VOGUE SILHOUETTE JUM-GLS
- 28 VOGUE SILHOUETTE MARTINI SHAKR
- 29 VOGUE SILHOUETTE MARTINI SHAKR
- 30 VOGUE SILHOUETTE MARTINI SHAKR
- 31 VOGUE SILHOUETTE MARTINI SHAKR
- 32 VOGUE SILHOUETTE MUG
- 33 VOGUE SILHOUETTE MUG
- 34 WAVES(BK & WH)JUM-GLS ASST 2
- 35 WHIMSICAL HORSES DOF-GLS
- 36 WINE & CHEESE RED WINE S/4
- 37 WINE & CHEESE WATER GOBLET S/4
- 38 WINE & CHEESE WHITE WINE S/4
- 39 WINE 10.5 OZ CLEAR 1P
- 40 WINE/CHEESEBOARD GLASS
- 41 WINTERFUN JUICE GLS GB S/4
- 42 WOOF JUICE GLS
- 43 WORLD DRINKS COSMOPOLITAN
- 44 WORLD DRINKS DOF-GLS
- 45 WORLD DRINKS JUM-GLS
- 46 WORLD DRINKS MARTINI SHAKER
- 47 WORLD DRINKS MARTINI SHAKER
- 48 WORLD DRINKS MARTINIS FOR 2
- 49 WORLD DRINKS MARTINIS FOR 2
- 50 WORLD DRINKS MARTINIS FOR 2
- 51 WORLD DRINKS MARTINIS FOR 2

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WORLD DRINKS MARTINIS FOR 2
ZOO ANIMALS JUICE GLS ASSMT
ZOO ANIMALS JUICE GLS GB S/4

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PRECIDIO, INC.

15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF SAN FRANCISCO
17 UNLIMITED CIVIL JURISDICTION
18

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

20 Plaintiff,)

21 v.)

22 PRECIDIO, INC., and DOES 1 through 150)
inclusive,)

23 Defendants.)

Case No. CGC 04-436841

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

25 Hearing: September 15, 2005
Time: 9:30 am
26 Dept: 301
Judge: Hon. James. L. Warren
Date Action Filed: December 6, 2004
Trial Date: None set

[Proposed] Judgment Pursuant To Terms Of Consent Judgment
Case No. CGC-04-436841

ENDORSED
FILED
San Francisco County Superior Court

SEP 15 2005

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

1 In the above-entitled action, Plaintiff Whitney Leeman and Defendant Precidio, Inc., having
2 agreed through their respective counsel that judgment be entered pursuant to the terms of the
3 Consent Judgment entered into by the parties, and after issuing an Order Approving Proposition 65
4 Settlement Agreement and Consent Judgment on September 15, 2005;

5 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil
6 Procedure section 664.6, judgment is entered in accordance with the terms of the Order Approving
7 Proposition 65 Settlement Agreement and Consent Judgment, between the parties.

8 **IT IS SO ORDERED.**

JAMES L. WARREN

9 Dated:

SEP 15 2005

Hon. James L. Warren
JUDGE OF THE SUPERIOR COURT