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15 Attorneys for Defendants
RUSS BERRIE AND COMPANY, INC.
AND STEVE'S HALLMARK, INC.

17 SUPERIOR COURT OF THE STATE OF CALIFORNIA
18 COUNTY OF SAN FRANCISCO
19 UNLIMITED JURISDICTION
20

21 WHITNEY R. LEEMAN, Ph.D.,

22 Plaintiff,

23 v.

24 RUSS BERRIE AND COMPANY, INC.;
25 STEVE'S HALLMARK, INC.; FOUR SEASONS
STORES, INC.; and DOES 1 through 50,

26 Defendants.
27
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Case No. CGC 04-436842

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

Hearing: October 12, 2005
Time: 9:30 am
Dept: 302
Judge: Hon. Ronald Quidachay
Action Filed: December 6, 2004
Trial Date: None set

ENDORSED
FILED
San Francisco County Superior Court

OCT 12 2005

GORDON PARK II Clerk
CYNTHIA S. HILL Deputy Clerk

[PROPOSED] ORDER APPROVING PROPOSITION 65 SETTLEMENT AND CONSENT JUDGMENT
CASE NO. CGC 04-436842

1 Plaintiff WHITNEY R. LEEMAN and Defendant RUSS BERRIE AND COMPANY,
2 INC. ("Defendant"), having agreed through their respective counsel that judgment be entered
3 pursuant to the terms of the Consent Judgment entered into by the above-referenced parties and
4 attached hereto as Exhibit 1; and after consideration of the papers submitted and the arguments
5 presented, the Court finds that the settlement agreement set out in the attached Consent Judgment
6 meets the criteria established by Health & Safety Code section 25249.7, in that:
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- 8 1. The health hazard warning that is required by the Consent Judgment complies with
9 Health & Safety Code section 25249.7;
- 10 2. The reimbursement of fees and costs to be paid pursuant to the parties' Consent
11 Judgment is reasonable under California law; and
- 12 3. The civil penalty amount to be paid pursuant to the parties' Consent Judgment is
13 reasonable.
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15 Accordingly, IT IS HEREBY ORDERED that Judgment be entered in the case referenced
16 above, in accordance with the terms of the Consent Judgment, attached hereto as Exhibit 1.
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18 OCT 12 2005
19 Dated: _____, 2005

RONALD E. QUIDACHAY

Hon. Ronald Evans Quidachay
Judge of the San Francisco Superior Court

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Exhibit A

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8 Whitney R. Leeman

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16 Attorneys for Defendants
17 Russ Berrie & Company, Inc.
18 and Steve's Hallmark, Inc.

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO
UNLIMITED JURISDICTION

WHITNEY R. LEEMAN, Ph.D.,
Plaintiff,

v.

RUSS BERRIE AND COMPANY, INC.,
STEVE'S HALLMARK, INC., FOUR
SEASONS STORES, INC., and DOES 1 through
50,
Defendants.

Case No. CGC 04-436842

STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT

1 **1. INTRODUCTION**

2 **1.1 Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and
3 between plaintiff Whitney Leeman (hereafter "Leeman" or "Plaintiff") and defendant Russ Berrie
4 and Company Incorporated ("Russ" or "Defendant"), with Plaintiff and Defendant collectively
5 referred to as the "Parties" and Leeman and Russ each being a "Party."

6 **1.2 Plaintiff.** Leeman is an individual residing in Northern California who seeks to
7 promote awareness of exposures to toxic chemicals and improve human health by reducing or
8 eliminating hazardous substances contained in consumer and industrial products.

9 **1.3 General Allegations.** Plaintiff alleges that Defendant has distributed and/or sold
10 in the State of California ceramic mugs and other ceramic tableware products with colored
11 artwork, designs or markings on the exterior surface with materials in that colored artwork,
12 designs or markings that contain cadmium, lead and/or lead compounds, which are listed pursuant
13 to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code
14 §§ 25249.5 *et seq.*, also known as Proposition 65, to cause cancer and birth defects and other
15 reproductive harm. Lead (and/or lead compounds) and cadmium shall be referred to herein as
16 "Listed Chemicals."

17 **1.4 Product Descriptions.** The products that are covered by this Consent Judgment
18 are defined as follows: ceramic mugs and other ceramic tableware items sold or distributed by
19 Defendant in California with colored artwork, designs or markings on the exterior surface
20 including, by way of example and without limitation, products contained in the items listed at
21 Exhibit A. Such products collectively are referred to herein as the "Products."

22 **1.5 Notices of Violation.** Beginning on September 3, 2004, Leeman served
23 Defendant and various public enforcement agencies with documents, entitled "60-Day Notice of
24 Violation" ("Notice") that provided Defendant and such public enforcers with notice that alleged
25 that Defendant was in violation of Health & Safety Code § 25249.6 for failing to warn purchasers
26 that certain products that they sold expose users in California to the Listed Chemicals.

27 **1.6 Complaint.** On December 21, 2004, Leeman, in the interest of the general public
28 in California, filed a complaint (hereafter referred to as the "Complaint" or the "Action") in the

1 Superior Court for the City and County of San Francisco against Defendant and Does 1 through
2 50, alleging violations of Health & Safety Code § 25249.6 based on the alleged exposures to one
3 or more of the Listed Chemicals contained in certain products sold by Defendant.

4 1.7 **No Admission.** Defendant denies the material factual and legal allegations
5 contained in Plaintiff's Notice and Complaint and maintain that all products that it has sold and
6 distributed in California including the Products have been and are in compliance with all laws.
7 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
8 finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or
9 be construed as an admission by Defendant of any fact, finding, conclusion, issue of law or
10 violation of law. However, this section shall not diminish or otherwise affect the obligations,
11 responsibilities and duties of Defendant under this Consent Judgment.

12 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties
13 stipulate that this Court has jurisdiction over the allegations of violations contained in the
14 Complaint and personal jurisdiction over Defendant as to the acts alleged in the Complaint, that
15 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this
16 Consent Judgment and to enforce the provisions thereof.

17 1.9 **Effective Date.** For purposes of this Consent Judgment, "Effective Date" shall be
18 June 1, 2005.

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

20 **2.1 Warning Obligations**

21 (a) **Required Warnings.** As of the Effective Date, Defendant shall not ship,
22 import, distribute or offer for sale or use in California any Products containing one or more the
23 Listed Chemicals or supply any Products containing one or more of the Listed Chemicals to any
24 entity for distribution, sale or use in California, unless warnings are given in accordance with one
25 or more provisions in subsection 2.2 below.

26 (b) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and
27 2.2 below shall not apply to:

28 (i) any Products manufactured before the Effective Date; or

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(ii) Reformulated Products as defined in section 2.3.

2.2 Clear and Reasonable Warnings

(a) Product Labeling. A warning may be given by affixing the following language to the packaging, labeling or directly to a specific Product by a Defendant, its agents. The manufacturer, the importer, the distributor or the retailer of the Product that states:

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

Warnings issued for Products pursuant to this subsection shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase. For purposes of this subsection, a warning statement or sticker placed on the bottom of the product packaging is not an adequate warning. Similarly, for purposes of this Consent Judgment, a warning insert that is placed inside the product packaging that is not intended to be opened prior to leaving the retail establishment is deemed not reasonably calculated to transmit the health hazard warning to the individual prior to purchase.

Any changes to the language or format of the warning required by this subsection shall only be made following: (1) written approval from the California Attorney General's Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to comment; or (2) Court approval.

(b) Point-of-Sale Warnings. Defendant may satisfy its warning obligations, where applicable, by arranging for signs to be posted at retail outlets or other locations in the State of California at which Products are sold directly to individuals, in accordance with the terms specified in subsections 2.2(b)(i), 2.2(b)(ii) and 2.2(b)(iii).

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

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

Where Covered Products are sold in proximity to other like items that do not require a warning (e.g., Reformulated Products as defined in section 2.3), the following statement must be used:¹

WARNING: The materials used as colored decorations on the exterior of the following ceramic products sold in this store contain lead and/or cadmium, chemicals known to the State of California to cause birth defects or other reproductive harm:

[DISPLAY LIST OF EACH SPECIFIC PRODUCT FOR WHICH WARNING IS REQUIRED]

(ii) A point-of-sale warning provided pursuant to subsection 2.2(b)(i) shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase and shall be placed or written in a manner such that the consumer understands to which *specific* Products the warnings apply so as to minimize, if not eliminate, the chances that an overpowering situation will arise.

(iii) If Russ intends to utilize point-of-sale warnings to comply with this Consent Judgment, it must provide advanced notice to each entity to whom it ships the Products for sale in California and expects to use point-of-sale warning signs. Such notice shall include specific posting instructions and any required warning materials (including, as appropriate, signs and/or stickers). Russ must obtain each such entity's written consent to participation in the warning program required in section 2.2 herein before

¹ For purposes of this Agreement, "sold in proximity" shall mean that another product is offered for sale close enough to the warning sign that an individual could not reasonably determine which product is subject to the warning)

1 shipping Products requiring a warning. Written consent is not required for Products with
2 warnings provided pursuant to subsection 2.2(a). Russ shall not be found to have violated
3 this Consent Judgment if it has complied with the terms of this Consent Judgment and has
4 transmitted the requisite warnings in the manner provided herein.

5 (iv) Any changes to the language or format of the warning
6 required for Products by this subsection shall only be made following: (1) written approval
7 from the California Attorney General's Office, provided that written notice of at least fifteen
8 (15) days is given to Plaintiff for the opportunity to comment; or (2) Court approval.

9 2.3 Reformulation Standards. The following subsections 2.3.1 and 2.3.2 set forth
10 the specifications which the Products must meet in order to be sold without a Proposition 65
11 warning. For purposes of this section, the following definitions apply:

12 "Children's Product" is defined as any Product intended or marketed primarily for use by
13 children such as: Products with designs on their exterior surface which are affiliated with
14 children's toys or entertainment (e.g., Sesame Street, Looney Tunes, Barbie, and Winnie the
15 Pooh) or Products of a reduced size so as to be marketed primarily for children (e.g., reduced-size
16 juice glasses intended for use by children) and similar items.

17 "Exterior Decorations" is defined as all colored artwork, designs and/or markings on the
18 exterior surface of the Product.

19 "Lip and Rim Area" is defined as the interior and exterior top 20 millimeters of a
20 hollowware Product, as defined by American Society of Testing and Materials Standard Test
21 Method C927-99.

22 "No Detectable lead or cadmium" shall mean that neither lead nor cadmium is detected at
23 a level above .02% (for lead) or .08% (for cadmium) by weight, respectively, using a sample size
24 of the materials in question measuring approximately 50-100 mg and a test method of sufficient
25 sensitivity to establish a limit of quantitation of less than 200 ppm.²

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27 ² If the decoration is tested after it is affixed to the Product, the percentage of the Listed
28 Chemical by weight must relate only to the decorating material and must not include any quantity
attributable to non-decorating material (e.g., the ceramic substrate).

1 "Reformulated Product" refers to any Product that meets the reformulation standards
2 described in section 2.3 as set forth below.

3 2.3.1 Food and Beverage Use Products. Any Product that is to be used for the
4 storage, consumption or serving of food or beverages is a Reformulated Product if it satisfies
5 either standard outlined in subsection 2.3.1 (a) or (b) or (c), subject to the following
6 qualifications:

7 All Children's Products must meet the Decorating Materials Content-Based
8 Standard outlined in subsection 2.3.1(b) to be considered a Reformulated Product.

9 If the Product is decorated in the Lip and Rim Area, it must also satisfy subsection
10 2.3.1(d) to be considered a Reformulated Product.

11 (a) Wipe Test-Based Standard. The Product must produce a test
12 result no higher than 1.0 micrograms (ug) of lead or 8.0 ug of cadmium applied on all of the
13 decorated portions of the exterior surface of the Product performed as outlined in NIOSH method
14 no. 9100.

15 (b) Decorating Material Content-Based Standard. The Exterior
16 Decorations, exclusive of the Lip and Rim Area, must only utilize decorating materials that
17 contain six one-hundredths of one percent (0.06%) lead by weight or less AND forty-eight one-
18 hundredths of one percent (0.48%) cadmium by weight or less, as measured either before or after
19 the material is fired onto (or otherwise affixed to) the Product, using EPA Test Method 3050B.²

20 (c) Total Acetic-Acid Immersion Test Based Standard. The
21 Product must achieve a result of 0.99 ppm or less for lead and 7.92 ppm or less for cadmium after
22 correction for internal volume when tested under the protocol attached hereto as Exhibit B (the
23 ASTM C927-99 test method, modified for total immersion with results corrected for internal
24 volume).³

25 ² If the decoration is tested after it is affixed to the Product, the percentage of the Listed
26 Chemical by weight must relate only to the decorating material and must not include any quantity
attributable to non-decorating material (e.g., the ceramic substrate).

27 ³ Because this method requires correction for internal volume, this method and
28 subsections 2.3.1(c) and 2.3.1(d)(ii) are only appropriate for ceramic hollowware.

1 (d) **Lip and Rim Area Exterior Decoration.** If the Product contains
2 Exterior Decorations in the Lip and Rim Area:

3 (i) Any Exterior Decorations that extend into the Lip and Rim
4 Area must only utilize decorating materials that contain No Detectable lead or cadmium; or

5 (ii) The Product must yield a test result showing a concentration
6 level of 0.5 ug/ml or less of lead and a result of 4.0 ug/ml or less of cadmium using ASTM
7 method C 927-99.⁴

8 **2.3.2 Non Food and Beverage Use Products.** Any Product that (i) appears to
9 be suitable for food or beverage use but is labeled in accordance with requirements described in
10 21 C.F.R. 109.16 for products not intended for use with food or beverages; (ii) physically could
11 not be used to store, serve or consume foods or beverages; or (iii) is not reasonably used for the
12 storage, serving or consumption of foods or beverages (e.g., vases, votive holders,
13 candleholders/candelabras, ashtrays, coasters, figurines, centerpieces, trivets, decorative tiles and
14 napkin rings) is a Reformulated Product if it satisfies either standard outlined in subsection
15 2.3.2(a). Any Children's Product must nevertheless meet the standards outlined in subsection
16 2.3.1(b) to be considered a Reformulated Product.

17 (a) The Product must produce a test result no higher than
18 4.0 micrograms (ug) of lead or 32.0 ug of cadmium using a Ghost Wipe™ test applied to all of
19 the colored decorations on the exterior surface of the Product, performed as outlined in NIOSH
20 method no. 9100.

21 **2.4 Reformulation Commitment.** Russ hereby commits to undertake good faith
22 efforts to ensure that as many Products as reasonably possible that it offers for sale in California
23 after January 1, 2006 shall qualify as Reformulated Products with the commitment that at least
24 80% (eighty percent) of the Products manufactured on or after December 31, 2006 shall qualify
25 as Reformulated Products, and with the further commitment to undertake all commercially
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27 ⁴ This method and subsections 2.3.1(c) and 2.3.1(d)(ii) are only appropriate for ceramic
28 hollowware.

1 reasonable efforts to ensure that 100% (one-hundred percent) of the Products reasonably likely to
2 be sold in California after January 1, 2007 qualify as Reformulated Products.

3 **3. MONETARY PAYMENTS.**

4 **3.1 Payments Pursuant to Health & Safety Code § 25249.7(b).** Pursuant to
5 Health & Safety Code Section 25249.7(b), Defendant shall pay \$20,000. This payment shall be
6 made payable to "Chanler Law Group in Trust For Whitney R. Leeman," and shall be delivered
7 to Plaintiff's counsel on or before June 10, 2005 at the following address:

8
9 **CHANLER LAW GROUP**
10 **Attn: Clifford A. Chanler**
71 Elm Street, Suite 8
New Canaan, CT 06840

11 (a) In the event that Defendant pays any sum pursuant to this section and the
12 Consent Judgment is not thereafter approved and entered by the Court, Leeman or her counsel
13 shall return any funds paid under this agreement within fifteen (15) days of receipt of a written
14 request from Defendant following notice of the issuance of the Court's decision.

15 (b) The Parties agree that Defendant's potential interest in and ability to
16 acquire and market Reformulated Products is to be accounted for in this section and, since it is
17 not a remedy provided for by law, the absence of Defendant previously acquiring, manufacturing,
18 marketing or selling Reformulated Products is not relevant to the establishment of a penalty
19 amount pursuant to section 3.1 above.

20 **3.2 Apportionment Pursuant to Health & Safety Code § 25192.** After Court
21 approval of this Consent Judgment pursuant to section 6, all monies received pursuant to section
22 3.1 shall be apportioned by Plaintiff in accordance with Health & Safety Code § 25192, with 75%
23 of these funds remitted to the State of California's Office of Environmental Health Hazard
24 Assessment and the remaining 25% of these monies retained by Plaintiff as provided by Health &
25 Safety Code § 25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to
26 the State of California the appropriate sums paid in accordance with this section.
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1 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
2 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
3 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
4 unknown, fixed or contingent (collectively "Claims"), against Defendant and each of its
5 distributors, wholesalers, licensors, licensees, auctioneers, retailers, dealers, customers, owners,
6 purchasers, users, parent companies, corporate affiliates, subsidiaries and their respective officers,
7 directors, attorneys, representatives, shareholders, agents, and employees (collectively,
8 "Defendant's Releasees") arising under or derived from Proposition 65 related to Defendant's or
9 Defendant's Releasees' alleged failure to warn about exposures to or identification of Listed
10 Chemicals contained in the Products and for all actions or statements made by Defendant or its
11 attorneys or representatives, in the course of responding to alleged violations of Proposition 65 by
12 Defendant. Additionally, the Parties expressly agree that nothing in this Section 5.1 shall be
13 construed to provide a release of liability to Steve's Hallmark, Inc. for the sale of Products other
14 than those supplied to Steve's Hallmark, Inc. by Russ.

15 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
16 binding resolution of any direct or derivative violation of Proposition 65 that have been or could
17 have been asserted in the Complaints against Defendant for its alleged failure to provide clear and
18 reasonable warnings of exposure to or identification of Listed Chemicals in the Products.

19 It is specifically understood and agreed that the Parties intend that Defendant's
20 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in
21 the future (so long as Defendant complies with the terms of the Consent Judgment) concerning
22 Defendant and the Defendant's Releasees' compliance with the requirements of Proposition 65 as
23 to the Listed Chemicals in the Products.

24 **5.2 Defendant's Release of Plaintiff.** Defendant waives all rights to institute any
25 form of legal action against Plaintiff, or her attorneys or representatives, for all actions taken or
26 statements made by Plaintiff and her attorneys or representatives, in the course of seeking
27 enforcement of Proposition 65 in this Action.

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1 **6. COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved and entered by the Court within one
4 year after it has been fully executed by all Parties, in which event any monies that have been
5 provided by Defendant pursuant to section 3 and section 4 above, shall be refunded within fifteen
6 (15) days.

7 **7. SEVERABILITY**

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

11 **8. ATTORNEYS' FEES**

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

16 **9. GOVERNING LAW**

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

22 **10. NOTICES**

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

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For Plaintiff: Chanler Law Group Attn: Clifford A. Chanler 71 Elm Street, Suite 8 New Canaan, CT 06840	For Defendant: Robert L. Falk Morrison & Foerster LLP 425 Market Street San Francisco, CA 94105-2482 with copies to Vice President and General Counsel Russ Berrie & Company 111 Bauer Drive Oakland, New Jersey 07436
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11. COUNTERPARTS; FACSIMILE SIGNATURES

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

12. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)

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

13. ADDITIONAL POST EXECUTION ACTIVITIES

The Parties shall mutually employ their best efforts to support the entry of this Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties agree to file a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of which Defendant's counsel shall prepare, within a reasonable period of time after the Execution Date (*i.e.*, not to exceed fifteen (15) days unless otherwise agreed to by the Parties' counsel based on unanticipated circumstances). Plaintiff's counsel shall prepare a declaration in support of the

1 Joint Motion which shall, *inter alia*, set forth support for the fees and costs to be reimbursed
2 pursuant to Section 4. Defendant shall have no additional responsibility to Plaintiff's counsel
3 pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and costs
4 incurred with respect to the preparation and filing of the Joint Motion and its supporting
5 declaration or with regard to Plaintiff's counsel appearing for a hearing or related proceedings
6 thereon.

7 Following the execution of this Consent Judgment by all Parties, Plaintiff shall, upon
8 receipt of information from Steve's Hallmark, Inc. verified by an officer of Steve's Hallmark, Inc.
9 identifying: 1) the names and addresses of other suppliers of the Products to Steve's Hallmark,
10 Inc. for the one year period preceding the issuance of the 60-Day Notice to Steve's Hallmark, Inc.
11 to the present; and 2) the name/description of each pattern or type of such Product sold to Steve's
12 Hallmark, Inc. by such other suppliers, file a dismissal without prejudice of Steve's Hallmark,
13 Inc. and Four Seasons Stores, Inc. from this Action.

14 **14. MODIFICATION**

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

20 **15. AUTHORIZATION**

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

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1 General shall be served with notice of any proposed modification to this Consent Judgment at
2 least fifteen (15) days in advance of its consideration by the Court.

3 **16. AUTHORIZATION**

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

7
8 **AGREED TO:**

AGREED TO:
Date: 

9 Date: _____

10 By:
11 Plaintiff Whitney R. Leeman

By: 1 June '05
Defendant Russ Berrie and Company, Inc.

12
13 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

14 Date: _____
15 CHANLER LAW GROUP

Date: _____
MORRISON & FOERSTER LLP

16 By:
17 Clifford A. Chanler
Attorneys for Plaintiff
18 WHITNEY R. LEEMAN

By:
Robert L. Falk
Attorneys for Defendant
RUSS BERRIE AND COMPANY,
INCORPORATED

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20 **IT IS SO ORDERED.**

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23 Date: _____

JUDGE OF THE SUPERIOR COURT

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AGREED TO:

AGREED TO:

Date: _____

Date: _____

By:
Plaintiff Whitney R. Leeman

By:
Defendant Russ Berrie and Company, Inc.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____
CHANLER LAW GROUP

Date: June 6, 2005
MORRISON & FOERSTER LLP

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

By: Robert L. Falk
Robert L. Falk
Attorneys for Defendant
RUSS BERRIE AND COMPANY,
INCORPORATED

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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By:
Plaintiff Whitney R. Leeman

By:
Defendant Russ Berrie and Company, Inc.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 6/1/05
CHANDLER LAW GROUP

Date: _____
MORRISON & FOERSTER LLP

By: *Cliff A. Chandler*
Clifford A. Chandler
Attorneys for Plaintiff
WHITNEY R. LEEMAN

By:
Robert L. Falk
Attorneys for Defendant
RUSS BERRIE AND COMPANY,
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Date: 5/14/05

Date: _____

By: Whitney R. Leeman
Plaintiff Whitney R. Leeman

By: _____
Defendant Russ Berrie and Company, Inc.

APPROVED AS TO FORM:

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CHANLER LAW GROUP

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MORRISON & FOERSTER LLP

By: _____
Clifford A. Chantler
Attorneys for Plaintiff
WHITNEY R. LEEMAN

By: _____
Robert L. Falk
Attorneys for Defendant
RUSS BERRIE AND COMPANY,
INCORPORATED

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

Exhibit A

All ceramic mugs and ceramic tableware with colored designs and/or artwork on the exterior, including but not limited to, Russ Berrie item numbers:

Item No	21245	27180	25485	25626	29321	23859	28275
21594	20770	27178	25484	25525	29322	26163	8361
21595	48194	27187	23599	15572	29323	26162	100418
21593	21021	27168	25288	15571	29324	23928	8104
23880	21022	27166	25298	24390	29325	28129	24385
23879	17689A	27228	23030	10393	29328	28128	29080
15611	25268	27229	23015	29601	29310	100239	20479
15610	29825	27227	23014	67132	29329	80222	100765
101128	20064	25064	28911	67111	29565	20405	26349
15855C	100812	48341	24545	67109	27303	20667	10918
80273	BN4404	48340	22306	67130	27250	20930	25718
80272	BN4402	25753	25229	67129	27375	80129	25717
80358	BN4403	26285	23586	67131	27376	25555	20477
80058	25870	25293	23585	67303	27379	25875	25536
15856C	22221	25286	22209	67134	27377	25876	25537
62210B	22220	25294	22208	21168	27378	37006	29706
62210A	25118	23600	25547	21183	27438	100235	29526
ANGPOS	25119	31302	23048	21145	27418	100937	20815
22218	25161	29303	23707	20772	27189	24384	23517
22554	25182	26743	29301	100590	27189P	26681	25520
23898	25163	25740	25548	60357	27260	22578	25522
24896	25165	25747	22322	29627	27265	20773	25329
25944	25164	31301	29281	80418	27268	21693	25334
27185	25167	25085	29300	16646	27281	25847	25330
25924	8273	25287	22569E	32942	27262	25848	25337
25925	30690	25295	101656	20439	27264	17825	25333
25926	30693	22386	26883E	23873	27283	25245	25335
25927	30735	22386C	80603	21487	27319	25247	25331
25928	80144	48313	80602	24594C	27331	25248	25336
25923	22017	48314	80604	27057	27330	25249	25332
28298	20771	48312	80618	24844	27332	25245	15833
20763	25659	48317	24925	27485	27328	24277	12910
20764	25660	48318	101520	27488	27327	24278	28704
25003	80403	48316	16650	27473	27329	24278	28703
25003C	80115	48315	21128	25785	28085	24276	28710
80231	80114	48351	28559	25784	28084	20828	28826
80232	80107	48319	20748	28105	27275	25241	28855
24435	12375	32349	25251	28104	27439	25242	28525
17807	28286	25225	25252	29664	27274	25243	16804
15453	100233	25226	25253	28103	27289	25244	21278
16789	22696	25227	25254	28102	27467	25240	29628
24544	24032	25224	25255	28081	27468	80398	21118
24537	29620	29293	25250	28080	27362	24275	28978
81520	29658	23796	23755	29311	27469	32690	28970
38071	21069	23797	21785	29314	27470	32684	28979
100237	29307	23794	22519E	29315	27471	13362	28933

1	28148	24989	23785	12530	29317	27363	20774	28934
	100630	24992	28002	21784	29318	27472	12521	28957
2	28276	25228	26901	100218	29319	27476	100435	28971
	21752	27179	26901E	25419	29320	23860	100238	28927
3	23852	28928	25112	29410	32966	21150	23246	21535
4	23619	28959	25111	24386	38050	21149	23243	21536
	32671	26346	28235	24382	38037	21148	23245	21541
5	27211	28125	28239	21858	27107	21151	23252	23733
	15557	28124	28243	12511	26479	21148	23251	23732
6	24964	8370	28247	12334	32954	21147	23249	21542
	27533	100236	28237	12337	32621	14540	23240	23742
7	24973	101504	28236	12336	28565	8309	20063	21540
	24974	29830	28242	12335	21239	19220	23974	23970
8	100878	25259	28241	12331	22216	21751	23975	23969
	100106	21781	28236	12723	25154	12210	23871	80512
9	20643	21782	28240	12724	25154	11302	23989	80513
	100885	25535	28246	12725	25156	24335	23981	24948
10	8311	12221	28245	12726	23708	24474	23987	24949
	26856	20640	28244	12181	25077	21258	23983	24950
11	20814	11485	27164	12182	29280	21257	23977	24947
	20897	32989	27165	12183	15015	24349	23991	26913
12	8266	21786	27163	12184	15014	24341	23986	23045
	101151	100877	24381	20987	22580	24348	23985	20322
13	100818	32992	100564	100527	80180	24342	23972	21306
	26800	25619	28913	100231	27300A	24347	23979	101535
14	20769	30983	22001	100048	8297	24343	23973	25524
	25748	22162	21854	100090	23214	24348	23968	22521
15	29584	32244	29447	100201	24437	24344	23994	29622
	21034	20775	23485	28420	15959C	15688C	23980	29626
16	100312	26723	25002	25586	17669	20486	23992	32245
17	8179	26722	25013	25633	8925	26702	23983	101514
	32054	100767	25012	25634	24339	29425	23978	24182
18	29624	29427	24380	25835	24336	80230	23990	48089
	100879	100801	28914	25832	24337	22344	23976	20776
19	8304	20945	29170	25831	24338	32652	23982	20777
	29582	20813	12329	25560	24340	12517	23984	25871
20	28583	20438	29259	25055	24345	21131	23735	28877
	29577	29602	12874	27108	21215	20685	23737	16848
21	20778	8302	25081	25697	21216	25874	21531	8210
	8204	22250P	23784	27022	21217	29657	21533	100072
22	80411	22250S	23785	25184	21218	18069	23738	21059
	32846	22250	23782	27580	21219	22228E	21534	29621
23	100823	8446	23783	26899	13551	29679	21539	32684
24	12514	8265	25270	26419	21181	32943	23739	24963
	20779	25568	24379	26849	21198	24926	23731	23815
25	25183	29423	23484	24273	21185	21918	21537	23817
	38039	27031	23211	38075	21184	21917	23741	23616
26	25211	21277	12664	25231	21182	21919	21538	28268
	25212	20867	23213	25232	21186	23244	23736	28792
27	3347350	29424	23212	25233	21197	23248	23730	28579
28	28915	26700	11277	25234	21199	23253	21530	23853

1	28250	24398	23270	25230	21195
	28249	100802	28830	25271	12214
2	28277	25110	20672	25271C	18081
	23852	22624	28873	20836	28330
3	23619	28817	21214	29816	38118
	32671	27045C	25860	28284	38125
4	27211	25142	22066	20342	21509
	15557	20369	28498	100220	21504
5	24984	29408	27053	25546	21503
	27533	23895	28463	8267	21505
6	24973	12872	27005	15452	21507
	24974	22182	28497	26887	21512
7	100878	22178	27048	32184	21508
	100106	8127	27088	32180	21502
8	20643	23019	27087	32189	21508
	100885	27453	27004	32248	21500
9	8311	27454	28423	29829	21511
	28658	27455	28870	21783	21501
10	20814	27457	12699	8312	21510
	20897	27458	11278	30157	23242
11	8288	27458	11274	30158	23241
	101151	27459	11271	30158	23247
12	100818	25843	21366	22583	23734
	28800	25031	11275	21750	21532
13	20789	25872	20122	29588	23740
	25748	28464	21433	28914	28792
14	29584	101512	27173	28709	28579
	21034	20484	27174	20046	23853
15	100312	20869	27172	28293	28249
	8179	29428	27170	28294	28277
16	32054	13318	27171	28285	28871
	29624	13316	27169	28126	100585
17	100879	13315	27288	24889C	100240
	8304	20332	27479	24880	17489
18	29582	20743	100772	29623	38102
	29583	29668	25868	14804	28332
19	29577	29452	25865	20747	
	20778	27798	29692	25067	
20	8204	24321	27480	101455	
	80411	12538	27461	25878	
21	32648	100478	27482	101530	
	100823	20839	27483	32721	
22	12514	23847	27464	32727	
	20779	20118	27485	32738	
23	25183	27484	27486	32725	
	38039	27483	27178	32249	
24	25211	28257	27177	32724	
	25212	27489	27175	20781	
25	3347350	22460	100327	15935C	
	28915	28872	29805	26798	
26	28280	20385	29515	38106	

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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 827-80. Run each sample in duplicate along with appropriate standards as well as aliquots of 4% acetic acid solution and distilled deionized water in plastic test tubes. Correct for the blank if necessary. If a sample of unknown goes off scale make necessary dilutions using 4% acetic acid from the same batch prepared for leaching. Record results in ppm using the following calculations:

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

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

relative to the internal volume.

See attached laboratory report forms.

To Determine The Internal Volume:

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

When Reporting Final Results Include The Following:

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

Materials Used In Testing Procedure:

Beakers - Nalgene, polypropylene, graduated 2000 ml.

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

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

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

Aluminum Baskets

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

Utility bath - same as above, holds 20 quarts.

Gloves - vinyl, disposable.

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

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

References:

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

pg. 757-769 ASTM Designation: C 738-81

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

pg. 682 ASTM Designation: C 676-74 (reapproved 1990)

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

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16 STEVE'S HALLMARK, INC.

17
18 SUPERIOR COURT OF THE STATE OF CALIFORNIA
19 COUNTY OF SAN FRANCISCO
20 UNLIMITED JURISDICTION
21

22 WHITNEY R. LEEMAN, Ph.D.,
23 Plaintiff,
24 v.
25 RUSS BERRIE AND COMPANY, INC.;
26 STEVE'S HALLMARK, INC.; FOUR SEASONS
STORES, INC.; and DOES 1 through 50,
27 Defendants.
28

Case No. CGC 04-436842

**[PROPOSED] JUDGMENT PURSUANT
TO TERMS OF CONSENT JUDGMENT**

Date: October 12, 2005
Time: 9:30 am
Dept: 302
Judge: Hon. Ronald Quidachay
Action Filed: December 6, 2004
Trial date: None set

1 In the above-entitled action, Plaintiff Whitney R. Leeman and Defendant Russ Berrie and
2 Company, Inc., having agreed through their respective counsel that judgment be entered pursuant
3 to the terms of the Consent Judgment entered into by the parties, and after issuing an Order
4 Approving Proposition 65 Settlement Agreement and Consent Judgment on October 12, 2005;

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

8 **IT IS SO ORDERED.**

9 Dated: OCT 12 2005

RONALD E. QUIDACHAY

Hon. Ronald Evans Quidachay
JUDGE OF THE SUPERIOR COURT