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FILED
 ALAMEDA COUNTY
 JUL 15 2005
 CLERK OF THE SUPERIOR COURT
 By David Hunter Deputy

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10 Attorneys for Plaintiff
 11 WHITNEY R. LEEMAN, Ph.D.

12
 13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 14 IN AND FOR THE COUNTY OF ALAMEDA
 15 UNLIMITED CIVIL JURISDICTION

16
 17 WHITNEY R. LEEMAN, Ph.D.,)
 18 Plaintiff)
 19 v.)
 20 JOAN BAKER DESIGNS, INC.; and DOES 1)
 21 through 150,)
 22 Defendants.)
 23

No. HG04147333
~~PRELIMINARY~~ JUDGMENT
 PURSUANT TO TERMS OF
 CONSENT JUDGMENT

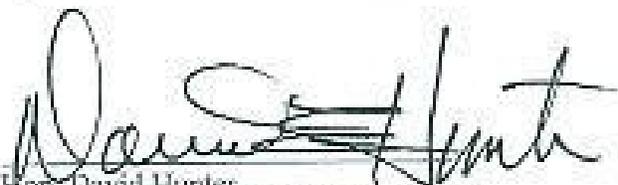
Date: July 15 2005
 Time: 9:30 a.m.
 Dept.: 520
 Judge: Hon. David Hunter

1 In the above-entitled action, Plaintiff Whitney Leeman, Ph. D. and Defendant Joan
2 Baker Designs, Inc., having agreed through their respective counsel that judgment be entered
3 pursuant to the terms of the Consent Judgment entered into by the parties, and after issuing
4 an Order Approving Proposition 65 Settlement Agreement and Consent Judgment on July
5 15, 2005.

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

10 IT IS SO ORDERED.

11 Dated: July 15, 2005

12 
13 Hon. David Hunter
14 JUDGE OF THE SUPERIOR COURT
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10 WHITNEY R. LEEMAN, Ph.D.

11 **EMBOSSED
12 FILED
13 ALAMEDA COUNTY**

14 JUL 15 2005

15 CLERK OF THE SUPERIOR COURT
16 By LINDNELL WILLIAMS

17 Deputy

18 SUPERIOR COURT OF THE STATE OF CALIFORNIA

19 IN AND FOR THE COUNTY OF ALAMEDA

20 UNLIMITED CIVIL JURISDICTION

21 WHITNEY R. LEEMAN, Ph.D.,

22 Plaintiff

23 v.

24 JOAN BAKER DESIGNS, INC., ; and DOES 1
25 through 150,

26 Defendants.

27 No. HG04147333

28 ~~PROPOSED~~ ORDER PURSUANT TO
TERMS OF STIPULATION AND
ORDER RE: CONSENT JUDGMENT

Date: July 15, 2005

Time: 9:30 a.m.

Dept.: 520

Judge: Hon. David Hunter

1 In the above-entitled action, Plaintiff Whitney Leoman, Ph. D. and Defendant Joan
2 Baker Designs, Inc., 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
4 and attached hereto as Exhibit A; and after consideration of the papers submitted and the
5 arguments presented, the Court finds that the settlement agreement set out in the attached
6 Consent Judgment meets the criteria established by Senate Bill 471, in that:

- 7 1. The health hazard warning that is required by the Consent Judgment complies
8 with Health & Safety Code section 25249.7 (as amended by Senate Bill 471);
- 9 2. The reimbursement of fees and costs to be paid pursuant to the parties' Consent
10 Judgment is reasonable under California law; and
- 11 3. The civil penalty amount to be paid pursuant to the parties' Consent Judgment is
12 reasonable,

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

15 IT IS SO ORDERED.

16 Dated: July 15, 2005

DAVID E. HUNTER

Hon. David Hunter
JUDGE OF THE SUPERIOR COURT

Exhibit A

1 Clifford A. Charles, State Bar No. 135534
 CHANTLER LAW GROUP
 2 71 Elm Street, Suite 8
 New Canaan, CT 06840
 3 Tel: (203) 966-9911
 Fax: (203) 801-5222

4 Stephen S. Sayad, State Bar No. 104966
 5 Laralei C. Paras, State Bar No. 203319
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 7 Tel: (415) 380-9222
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8 Attorneys for Plaintiff
 9 WHITNEY R. LEE MAN, Ph.D.

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 FOR THE COUNTY OF ALAMEDA

12 UNLIMITED CIVIL JURISDICTION

13 WHITNEY R. LEE MAN, Ph.D.,

Case No. HC-04147033

14 Plaintiff,

CONSENT JUDGMENT

15 v.

16 JOAN BAKER DESIGNS, INC., and
 DOES 1 through 150,

17 Defendants.

18
 19
 20 This Consent Judgment is entered into by and between
 21 Whitney R. Leeman, Ph.D. ("Dr. Leeman") and JOAN BAKER DESIGNS,
 22 INC. a California corporation (hereafter "JOAN BAKER"), as of
 23 January 31, 2005, or the date a copy is delivered to JOAN
 24 BAKER's attorneys of record by fax with signatures on behalf of
 25 Dr. Leeman and her attorneys of record, whichever is earlier
 26 (the "Effective Date"). The parties agree to the following
 27 terms and conditions:
 28

1 WHEREAS:

2

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

8

9 B. Dr. Leeman alleges that JOAN BAKER is a company that
10 currently manufactures and sells or has in the past
11 manufactured and sold certain glass and/or metal home decorative
12 products including nightlights, sun catchers, picture frames,
13 votives (aka votive candles or votive candle holders), boxes,
14 windchimes, glass screens, lamps and candleholders that contain
15 lead or lead compounds, a substance known to the State of
16 California to cause birth defects (or other reproductive harm);

17

18 C. JOAN BAKER allegedly sells and distributes for re-sale
19 or has in the past manufactured and sold in the state of
20 California certain products commonly referred to as glass and
21 metal home decorative products including nightlights, sun
22 catchers, picture frames, votives (aka votive candles or votive
23 candle holders), boxes, windchimes, glass screens, lamps and
24 candleholders that contain lead (or lead compounds) (the "Listed
25 Chemical"), and which are covered by this Agreement, (all such
26 JOAN BAKER products to be collectively referred to hereinafter
27 as the "Products"). A list of the products are referenced on
28 Exhibit A to this Agreement.

1 D. On September 12, 2003, and November 24, 2004, Dr.
 2 Leeman first served JOAN BAKER and other public enforcement
 3 agencies with a document entitled "60-Day Notice of Violation"
 4 that provided JOAN BAKER, and such public enforcers, with notice
 5 that JOAN BAKER was allegedly in violation of Health & Safety
 6 Code Section 25249.6 for failing to warn purchasers that certain
 7 products sold in California expose users to the Listed Chemical.
 8 On or before February 15, 2005, Dr. Leeman will be serving a
 9 Supplemental Notice on JOAN BAKER and all required public
 10 enforcers expanding Plaintiff's prior allegations concerning the
 11 Products to include alleged exposures from picture frames,
 12 vases, boxes, windchimes and glass screens ("Supplemental
 13 Notices").

14
 15 E. On May 24, 2004, Dr. Leeman filed a complaint entitled
 16 Whitney R. Leeman, Ph.D. v. Joan Baker Designs, Inc. et al. in
 17 the Alameda County Superior Court, naming JOAN BAKER as a
 18 defendant and alleging violations of Business & Professions Code
 19 Section 17200 and Section 17500 as well as Health & Safety Code
 20 Section 25249.6 on behalf of individuals in California who have
 21 been exposed to one or more chemicals, listed pursuant to
 22 Proposition 65, contained in the Products that JOAN BAKER sells
 23 and distributes. Upon the running of the 60-day periods
 24 associated with the issuance of the Supplemental Notices, and
 25 provided that no authorized public enforcer of Proposition 65
 26 initiates an action against JOAN BAKER based on the additional
 27 allegations therein contained in the interim, the above-
 28 captioned Complaint and this Consent Judgment shall be deemed

1 such that the definition of "Products" as used herein shall be
 2 deemed to extend to picture frames, votives, boxes, windchimes,
 3 and glass screens as well ; and
 4

5 F. Nothing in this Agreement shall be construed as an
 6 admission by JOAN BAKER of any fact, finding, issue of law or
 7 violation of law, nor shall compliance with this Agreement
 8 constitute or be construed as an admission by JOAN BAKER of any
 9 fact, finding, conclusion, issue of law or violation of law.
 10 However, this paragraph shall not diminish or otherwise affect
 11 the obligations, responsibilities, and duties of JOAN BAKER
 12 under this Agreement.
 13

14 NOW THEREFORE, DR. LEEGAN AND JOAN BAKER AGREE AS FOLLOWS:

15
 16 1.0 Product Warnings. For all Products that are
 17 manufactured after the Effective Date of this Agreement, JOAN
 18 BAKER agrees to ensure that when shipped by joan baker each of
 19 them bear the following warning statement (hereinafter the
 20 "Warning"):

21
 22 **WARNING:** This product contains lead, a
 23 chemical known to the State
 24 of California to cause birth
 25 defects (or other
 26 reproductive harm). Please
 27 wash hands thoroughly after
 28 handling this product.

26 The Warning stated above may be: (a) on a product
 27 label attached to the Product; (b) on the accompanying packaging
 28 as a sticker; (c) on a store sign sufficiently near the



1 Products' point of sale so that it is likely to be read by an
 2 ordinary individual under customary conditions of purchase for
 3 the Products; or (d) on a "hang-tag" hanging on the Product by a
 4 string, tape or similar method. For purposes of this Consent
 5 Judgment, a warning sticker placed on product packaging that is
 6 not expected to accompany the Products when purchased by
 7 consumers or end users (e.g., on a carton which a retailer will
 8 dispose of) does not comply with this paragraph.

9
 10 **1.1 Warning Exceptions**

11
 12 No warnings are needed if either of the two following
 13 conditions is met:

14
 15 **1.1.A Products Are Lead Free**

16
 17 Any Product that contains .4 percent (.4%) lead or
 18 less (by weight) in each material used in the Products is deemed
 19 lead free and, thus, does not require any warnings mandated by
 20 paragraph 1.0.

21
 22 **1.1.B Exemption For Old Products**

23
 24 Any Product that was manufactured prior to the
 25 Effective Date of this Agreement does not require any warnings
 26 mandated by paragraph 1.0 or by Health & Safety Code section
 27 25249.6.

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1.2 Lead-Free Component Commitment

As part of its commitment to promote the public health, JOAN BAKER agrees that all Products manufactured after the Effective Date will be ordered to utilize lead-free solder and came containing .4% lead or less (by weight) whenever such materials are used in the Products to be sold by JOAN BAKER in the State of California.

2. Payment Pursuant To Health & Safety Code § 25249.7(b).

Pursuant to Health & Safety Code Section 25249.7(b), JOAN BAKER shall pay \$2,000 on or before May 27, 2005. This payment is to be made payable to "Chandler Law Group In Trust For Whitney R. Leeman". If the Consent Judgment is not approved by the Court, Dr. Leeman will return all funds, with interest thereon at the prevailing federal funds rate within five (5) calendar days of notice of the Court's decision. All monies shall be apportioned by Dr. Leeman in accordance with Health & Safety Code Section 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment.

3.0 Reimbursement Of Fees And Costs. The parties

acknowledge that Dr. Leeman and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. JOAN BAKER then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had

1 been finalized. The parties then attempted to (and did) reach
2 an accord on the compensation due to Dr. Leeman and her counsel
3 under the Private Attorney General doctrine codified at Code of
4 Civil Procedure Section 1021.5 for all work performed through
5 the Effective Date of the Agreement. Under the Private Attorney
6 General doctrine, JOAN BAKER shall reimburse Dr. Leeman and her
7 counsel for her fees and costs, incurred as result of
8 investigating, bringing this matter to JOAN BAKER's attention,
9 litigating and negotiating a settlement in the public interest.
10 JOAN BAKER shall pay Dr. Leeman and her counsel \$18,000 for all
11 attorneys' fees, expert and investigation fees, and litigation
12 costs, on or before May 27, 2005, payable to the "Chanler Law
13 Group". If the Consent Judgment is not approved by the Court,
14 Dr. Leeman and the Chanler Law Group will return all funds, with
15 interest thereon at the prevailing federal funds rate within
16 five (5) calendar days of notice of the Court's decision.
17

18 **4. Release Of JOAN BAKER.** Dr. Leeman, by this Agreement,
19 on behalf of herself, her agents, representatives, attorneys,
20 assigns, and on behalf of all individuals in California who have
21 been exposed to one or more chemicals listed pursuant to
22 Proposition 65 contained in the Products and in the interest of
23 the general public, and the Order granting the motion described
24 in Section 3.1 of this Agreement shall provide that Dr. Leeman,
25 in the interests of the general public, waives all rights to
26 institute or participate in, directly or indirectly, any form of
27 legal action, and releases all claims, liabilities, obligations,
28 losses, costs, expenses, fines, penalties, fees, and damages,

-7-

CONSENT JUDGMENT

[Handwritten signature]

CONSENT JUDGMENT

[Handwritten initials]

1 violations of Proposition 65 or Business & Profession Code
 2 Section 17200 and Section 17500 by JOAN BAKER. Provided,
 3 however, that Dr. Leeman shall remain free to institute any form
 4 of legal action to enforce the provisions of this Consent
 5 Judgment.

6
 7 5. **JOAN BAKER's Release Of Dr. Leeman.** JOAN BAKER, by
 8 this Agreement, waives all rights to institute any form of legal
 9 action against Dr. Leeman and her attorneys or representatives,
 10 for all actions or statements made by Dr. Leeman or her
 11 attorneys or representatives, in the course of seeking
 12 enforcement of Proposition 65 or Business & Profession Code
 13 Section 17200 and Section 17500 against JOAN BAKER in this
 14 litigation. Provided, however, that JOAN BAKER shall remain
 15 free to institute any form of legal action to enforce the
 16 provisions of this Consent Judgment.

17 6. **Post Execution Activities.** The Parties shall mutually
 18 employ their best efforts to support the entry of the Agreement
 19 as a Consent Judgment by the Court in a timely manner. The
 20 Parties acknowledge that, pursuant to Health & Safety Code
 21 Section 25249.7, a noticed motion is required to obtain judicial
 22 approval of this Consent Judgment. Accordingly, counsel for Dr.
 23 Leeman will prepare, file and serve a Motion to Approve the
 24 Agreement within a reasonable period of time after the Effective
 25 Date. In the event that any third party, including any public
 26 enforcer, objects or otherwise comments on one or more
 27 provisions of this Agreement, JOAN BAKER agrees to use its best
 28



1 efforts to support each of the terms of the Agreement, as well
2 as to seek judicial approval of this Agreement.

3
4 **7. Court Approval.** If, for any reason, this Consent
5 Judgment is not ultimately approved by the Court, this Agreement
6 shall be deemed null and void except that provisions requiring
7 the repayment of amounts paid by JOAN BAKER with interest shall
8 survive and be enforceable.

9
10 **8. Severability.** In the event that any of the provisions
11 of this Agreement are held by a court to be unenforceable, the
12 validity of the enforceable provisions shall not be adversely
13 affected.

14
15 **9. Attorney's Fees.** In the event that a dispute arises
16 with respect to any provision(s) of this Agreement (including,
17 but not limited to, disputes arising from payments to be made
18 under this Agreement), reasonable attorneys' fees incurred from
19 the resolution of such dispute shall be available to the
20 prevailing party.

21
22 **10. Governing Law.** The terms of this Agreement shall be
23 governed by the laws of the State of California.

24
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1 11. Notices. All correspondence to Dr. Leeman shall be
2 mailed to:

3 Clifford A. Chanler
4 Chanler Law Group
5 71 Elm Street, Suite #
6 New Canaan, CT 06840
7 Tel: (203) 966-9911

8 All correspondence to JOAN BAKER shall be mailed to:

9 Donald J. Hamman, Esq.
10 Stradling, Yocca, Carlson & Rauth
11 660 Newport Drive, Suite 1600
12 Newport Beach, CA 92660-6422
13 Tel.: (949) 725-4000
14 Fax: (949) 725-4100

15 12. Compliance With Reporting Requirements (Health &
16 Safety Code § 25249.7(f)). The parties do not dispute for
17 purposes of this Agreement that the reporting provisions of
18 Health & Safety Code § 25249.7(f) apply to this Consent
19 Judgment. Counsel for Dr. Leeman shall comply with that section
20 by submitting the required reporting form to, and serving a copy
21 of this Consent Judgment on, the California Attorney General's
22 Office when noticing the Motion to Approve hearing, if one is
23 required by law. Counsel for Dr. Leeman shall submit the
24 Consent Judgment to the Court in accordance with the
25 requirements of Health & Safety Code § 25249.7(f) and its
26 implementing regulations, thereby allowing the Attorney General
27 to serve any comments to this Consent Judgment prior to the end
28 of the review period.

1 deemed an original, and all of which, when taken together, shall
2 constitute one and the same document.

3
4 14. Authorization. The undersigned are authorized to
5 execute this Agreement on behalf of their respective parties and
6 have read, understood and agree to all of the terms and
7 conditions of this Agreement.

8
9 AGREED TO:
10 DATE: 1/29/05
11 Whitney R. Loeman
12 Whitney R. Loeman, Ph.D.
13 PLAINTIFF

14
15 AGREED TO:
16 DATE: 2-9-05
17 Joan Baker Designs, Inc.
18 Joan Baker Designs, Inc.
19 DEFENDANT

20
21 APPROVED AS TO FORM:
22 DATE: February 7, 2005
23 Stephen S. Sayed
24 Stephen S. Sayed
25 Attorneys for Plaintiff
26 Whitney R. Loeman, Ph.D.

27
28 APPROVED AS TO FORM:
29 DATE: 2/9/05
30 Donald J. Harshbarger
31 Donald J. Harshbarger
32 Stradling, Yocum, Carlson &
33 Rauth
34 Attorneys for defendant
35 JOAN BAKER DESIGNS, INC.

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Contract 0000000000

Joan Baker

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

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

AGREED TO:

AGREED TO:

DATE: _____

DATE: 2-9-05

Whitney R. Leeman, Ph.D.
PLAINTIFF

Joan Baker Designs
Joan Baker Designs, Inc.
DEFENDANT

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: _____

DATE: 2/9/05

Stephen S. Sayad
Attorneys for Plaintiff
Whitney R. Leeman, Ph.D.

Donald J. Hoffman
Donald J. Hoffman
Stradling, Young, Carlson &
Rauth
Attorneys for Defendant
JOAN BAKER DESIGNS, INC.

Handwritten initials/signature

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Exhibit A

Glass and/or Metal Home Decorative Products which may have at any time during the relevant period included lead or lead solder including, but not limited to, night lights, sun catchers, picture frames, votives (aka votive candles or votive candle holders), boxes, windchimes, glass screens, lamps, and candleholders.

QBYA
[Signature]