



1 DAVID LAVINE, BAR NO. 166744  
 2 **HIRST & CHANLER LLP**  
 2560 Ninth Street  
 Parker Plaza, Suite 214  
 3 Berkeley, CA 94710-2565  
 Telephone: (510) 848-8880  
 4 Facsimile: (510) 848-8118

5 Attorneys for Plaintiff  
 Whitney R. Leeman, Ph.D.

6 JEFFREY B. MARGULIES, BAR NO. 126002  
 7 **FULBRIGHT & JAWORSKI LLP**  
 555 S. Flower Street, 41st Floor  
 8 Los Angeles, California 90071  
 Telephone: (213) 892-9200  
 9 Facsimile: (213) 680-4518

10 Attorneys for Defendant  
 Ross Stores, Inc.

**FILED**  
 ALAMEDA COUNTY

JAN 10 2008

CLERK OF THE SUPERIOR COURT  
 By *Carole Simpson* Deputy

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

17 WHITNEY LEEMAN, PH.D.,  
 18 Plaintiff,  
 19 v.  
 20 ROSS STORES, INC.,  
 21 Defendant.

) Case No. RG07351051

) **ORDER ENTERING REVISED**  
 ) **CONSENT JUDGMENT PURSUANT**  
 ) **TO STIPULATION [PROPOSED]**

) DATE: DECEMBER 27, 2007  
 ) TIME: 9:00 AM  
 ) DEPT: 301

24  
 25 The Motion for Entry of Revised Consent Judgment Pursuant to Stipulation came on for  
 26 hearing on December 27, 2007, in Department 301 of the above-entitled court, before the  
 27 Honorable Ronni MacLaren. David Lavine appeared on behalf of plaintiff Whitney Leeman, and  
 28 Mahshid Tarazizadeh appeared on behalf of defendant Ross Stores. Upon consideration of the

1 joint stipulation for entry of revised consent judgment, and all the initial moving papers, the  
2 motion is hereby GRANTED. Pursuant to and in accordance with Health & Safety Code  
3 §25249.7(f)(4), the Court makes the following findings with respect to the Revised Consent  
4 Judgment attached hereto as Exhibit A:

5 1. The Revised Consent Judgment ensures compliance with the Proposition 65 warning  
6 requirement;

7 2. The attorneys' fee award in the Consent Judgment is reasonable under California law;  
8 and

9 3. The Revised Consent Judgment is in the public interest.

10 In light of the findings set forth herein, the Revised Consent Judgment is hereby  
11 APPROVED.

12  
13 **IT IS SO ORDERED.**

14  
15 Dated: 1/10/08

  
16 JUDGE OF THE SUPERIOR COURT

# **Exhibit A**

1 David Lavine, State Bar No. 166744  
George W. Dowell, State Bar No. 234759  
2 HIRST & CHANLER LLP  
2560 Ninth Street  
3 Parker Plaza, Suite 214  
4 Berkeley, CA 94710-2565  
Telephone: (510) 848-8880  
5 Facsimile: (510) 848-8118

6 Attorneys for Plaintiff  
Whitney R. Leeman, Ph.D.

7  
8 Jeffery B. Margulies, State Bar No. 126002  
FULBRIGHT & JAWORSKI LLP  
555 S. Flower Street, 41st Floor  
9 Los Angeles, California 90071  
10 Telephone: (213) 892-9200  
Facsimile: (213) 680-4518

11  
12 Attorneys for Defendant  
ROSS STORES, INC.

14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 FOR THE COUNTY OF ALAMEDA COUNTY  
16 UNLIMITED CIVIL JURISDICTION  
17

19 WHITNEY LEEMAN, PH.D., ) Case No.  
20 )  
Plaintiff, )  
21 )  
v. ) **STIPULATION AND [PROPOSED]**  
22 ) **ORDER RE: REVISED CONSENT**  
ROSS STORES, INC., ) **JUDGMENT**  
23 )  
Defendant. )  
24 )  
25 )  
26 )  
27 )  
28 )

1       **1. INTRODUCTION**

2           **1.1 Whitney R. Leeman, Ph.D. and Ross Stores, Inc.** This Revised Consent  
3 Judgment (Consent Judgment) is entered into by and between Whitney R. Leeman, Ph.D., (Dr.  
4 Leeman) and Ross Stores, Inc., (Ross), with Dr. Leeman and Ross referred to as the “Parties” and  
5 with Dr. Leeman and Ross each being a “Party.”

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

9           **1.3 Ross.** Ross employs ten or more persons and is a person in the course of doing  
10 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California  
11 Health & Safety Code §25249.6 *et seq.* (Proposition 65).

12           **1.4 General Allegations.** Dr. Leeman alleges that Ross has sold cosmetic kits  
13 containing lead in the State of California without the requisite health hazard warnings. Lead is a  
14 substance known to cause birth defects and other reproductive harm and is listed pursuant to  
15 Proposition 65.

16           **1.5 Product Description.** The products that are covered by this Consent Judgment  
17 (“Products”) are cosmetic kits manufactured and/or distributed by Frenkel International Group  
18 Inc. that contain any combination of eye shadow, eyeliner, and/or lipstick (or lip gloss) such as  
19 the *Color Boutique By Classically Me Gift Set, (603 D1111 C5934)*.

20           **1.6 Notice of Violation.** On October 13, 2006, Dr. Leeman served Ross and various  
21 public enforcement agencies with a document entitled “60 Day Notice of Violation” (Notice) that  
22 provided Ross and such public enforcers with notice that alleged that Ross was in violation of  
23 California Health & Safety Code §25249.6 for failing to warn consumers that Products sold by  
24 Ross exposed users in California to lead.

25           **1.7 Complaint.** On October 9, 2007, Dr. Leeman, who is acting in the interest of the  
26 general public in California, filed a complaint (hereafter referred to as the “Complaint” or the  
27 “Action”) in the Superior Court in and for the County of Alameda against Ross, alleging  
28

1 violations of Health & Safety Code §25249.6 based on the alleged exposures to lead contained in  
2 the Products sold by Ross.

3 1.8 **Exempt Supplier.** Based on the information available to it, Ross believes that  
4 Frenkel International Group, which supplied Ross with the Products, has fewer than ten  
5 employees and is not a person in the course of doing business under Proposition 65.

6 1.9 **Ross' Response to Notice of Violation.** Following issuance of the Notice, on  
7 October 13, 2006, Ross voluntarily withdrew the Products from retail sale in California.

8 1.10 **No Admission.** Ross denies the material factual and legal allegations contained in  
9 the Complaint and maintains that all Products that it has sold and distributed in California have  
10 been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as  
11 an admission by Ross of any fact, finding, issue of law, or violation of law, nor shall compliance  
12 with this Consent Judgment constitute or be construed as an admission by Ross of any fact,  
13 finding, conclusion, issue of law, or violation of law, such being specifically denied by Ross.  
14 However, this Section shall not diminish or otherwise affect Ross' obligations, responsibilities,  
15 and duties under this Consent Judgment.

16 1.11 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the Parties  
17 stipulate that this Court has jurisdiction over Ross as to the allegations contained in the  
18 Complaint, that venue is proper in the County of Alameda and that this Court has jurisdiction to  
19 enter and enforce the provisions of this Consent Judgment.

20 1.12 **Effective Date.** For purposes of this Consent Judgment, the term "Effective Date"  
21 shall mean the date this agreement is fully executed by the parties.

## 22 **2. INJUNCTIVE RELIEF**

23 2.1 After the Effective Date, Ross shall neither sell Products, nor offer Products for  
24 sale, in California without first providing Dr. Leeman with notice of its intent to offer Products  
25 for sale in California. Within 30 days of receipt of notice of such intent, Plaintiff may object to  
26 sale of the Products in California without a warning regarding alleged exposure to lead under  
27 Proposition 65. If Dr. Leeman objects, Ross shall neither sell nor offer Products for sale in  
28 California absent written agreement of plaintiff or further order of court, and the parties shall

1 meet and confer in an attempt to resolve their differences before seeking an order from the court  
2 as to whether any such warnings are required.

3 **3. MONETARY PAYMENTS**

4 3.1 Ross shall not be required to pay a civil penalty pursuant to Health and Safety  
5 Code Section 25249.7(b).

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

7 4.1 Ross shall reimburse Dr. Leeman and her counsel for fees and costs incurred as a  
8 result of investigating, bringing this matter to Ross' attention, and negotiating a settlement in the  
9 public interest. Ross shall pay Dr. Leeman and her counsel \$18,000 for all attorneys' fees, expert  
10 and investigation fees, litigation, and related costs. The payment shall be made payable to  
11 "HIRST & CHANLER LLP" and shall be delivered within thirty (30) days of the Effective Date  
12 at the following address:

13 HIRST & CHANLER LLP  
14 Attn: Proposition 65 Controller  
15 2560 Ninth Street  
16 Parker Plaza, Suite 214  
17 Berkeley, CA 94710 2565

18 **5. RELEASE OF ALL CLAIMS**

19 **5.1 Dr. Leeman's Release of Ross.**

20 5.1.1 In further consideration of the promises herein contained, and for the  
21 payment to be made pursuant to Section 4.1, Dr. Leeman on behalf of herself, her past and current  
22 agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general  
23 public, hereby waives all rights to institute or participate in, directly or indirectly, any form of  
24 legal action and releases all claims, including, without limitation, all actions, and causes of action,  
25 in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses,  
26 or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of  
27 any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"),  
28 against Ross and its parent companies, corporate affiliates, subsidiaries, and their respective

1 officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and  
2 parent entities, successors, and/or assigns (collectively "Releasees").

3 5.1.2 This Consent Judgment is a full, final, and binding resolution between Dr.  
4 Leeman and Ross, and its Releasees of any violation of Proposition 65, regarding exposure to  
5 lead arising in connection with the manufacture, sale, distribution, or use of Products sold by  
6 Ross and its Releasees prior to the Effective Date, or any claim based on the facts or conduct  
7 alleged in the Complaint, or facts similar to those alleged, whether based on actions committed by  
8 Ross or its Releasees.

9 5.1.3 This release is limited to those claims that arise under Proposition 65, as  
10 such claims relate to Ross' alleged failure to warn about exposures to lead contained in the  
11 Products.

12 5.1.4 The Parties further understand and agree that this release shall not extend  
13 upstream to any entities that manufactured the Products or any component parts thereof, or any  
14 distributors or suppliers who sold the Products or any component parts thereof to Ross.

15 5.2 **Ross' Release of Dr. Leeman.** Ross waives any and all claims against Dr.  
16 Leeman, her attorneys, and other representatives for any and all actions taken or statements made  
17 (or those that could have been taken or made) by Dr. Leeman and her attorneys and other  
18 representatives, whether in the course of investigating claims or otherwise seeking enforcement of  
19 Proposition 65 against it in this matter, and/or with respect to the Products.

20 **6. COURT APPROVAL**

21 6.1 This Consent Judgment is not effective until it is approved and entered by the  
22 Court and shall be null and void if, for any reason, it is not approved and entered by the Court, in  
23 which event any monies that have been provided to Plaintiff, or her counsel pursuant to  
24 Section 4.1 above, shall be refunded to Ross.

25 **7. ATTORNEYS' FEES**

26 7.1 Except as specifically provided herein, each Party shall be responsible for its own  
27 attorney's fees, expert fees, investigative and other costs of litigation, and taxable costs.

28

1           7.2    In the event that, after Court approval, any dispute arises with respect to any  
2 provision of this Consent Judgment the prevailing Party shall be entitled to its reasonable  
3 attorneys' fees and costs.

4       **8.     GOVERNING LAW**

5           8.1    The terms of this Consent Judgment shall be governed by the laws of the State of  
6 California and apply within the State of California. In the event that Proposition 65 is repealed or  
7 is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Ross  
8 shall provide written notice to Dr. Leeman of any asserted change in the law, and shall have no  
9 further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the  
10 Products are so affected.

11       **9.     NOTICES**

12           9.1    Unless specified herein, all correspondence and notices required to be provided  
13 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first  
14 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any Party  
15 by the other Party at the following addresses:

16           To Ross:

17           Mark LeHocky  
18           Senior Vice President and General Counsel  
19           Ross Stores, Inc.  
20           4440 Rosewood Drive  
21           Pleasanton, CA 94588

22           With a copy to:

23           Jeffrey B. Margulies  
24           FULBRIGHT & JAWORSKI LLP  
25           555 S. Flower Street, 41st Floor  
26           Los Angeles, California 90071

27           To Dr. Leeman:

28           Proposition 65 Coordinator  
            HIRST & CHANLER LLP  
            2560 Ninth Street  
            Parker Plaza, Suite 214

1 Berkeley, CA 94710 2565

2 9.2 Any Party, from time to time, may specify in writing to the other Party a change of  
3 address to which all notices and other communications shall be sent.

4 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

5 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
6 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
7 the same document.

8 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

9 11.1 Dr. Leeman and Ross agree to mutually employ their best efforts to support the  
10 entry of this agreement as a Consent Judgment and obtain approval of the Consent Judgment by  
11 the Court in a timely manner. The parties acknowledge that, pursuant to California Health &  
12 Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Consent  
13 Judgment. Accordingly, Dr. Leeman agrees to file a Motion to Approve the Agreement  
14 ("Motion"). Ross shall have no additional responsibility to Dr. Leeman's counsel pursuant to  
15 Code of Civil Procedure §1021.5 or otherwise with regard to reimbursement of any fees and costs  
16 incurred with respect to the preparation and filing of the Motion or with regard to Dr. Leeman's  
17 counsel appearing for a hearing thereon.

18 **12. MODIFICATION**

19 12.1 This Consent Judgment may be modified only upon written agreement of the  
20 Parties and upon entry of a modified Consent Judgment by the Court thereon, or upon a motion of  
21 any Party as provided by law and upon entry of a modified Consent Judgment by the Court.

22 **13. ENTIRE AGREEMENT**

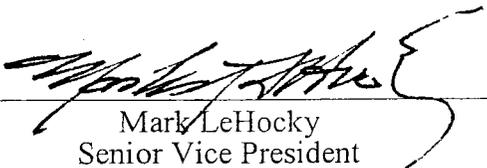
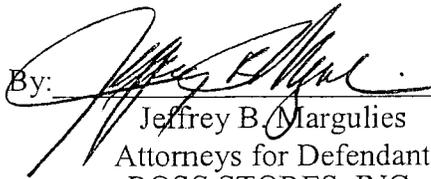
23 13.1 This Consent Judgment contains the sole and entire agreement and understanding  
24 of the Parties with respect to the entire subject matter hereof and any and all prior discussions,  
25 negotiations, commitments and understandings related hereto. No representations, oral or  
26 otherwise, express or implied, other than those contained herein have been made by any party  
27

28

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be  
2 deemed to exist or to bind any of the Parties.

3 **14. AUTHORIZATION**

4 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of  
5 their respective Parties and have read, understood, and agree to all of the terms and conditions of  
6 this Consent Judgment.

|   |  |
|---|--|
| <p>7</p> <p>8 <b>AGREED TO:</b></p> <p>9 Date: _____</p> <p>10</p> <p>11 By: _____</p> <p>12 WHITNEY R. LEEMAN, Ph.D.</p>   | <p>8 <b>AGREED TO:</b></p> <p>9 Date: <u>12-14-07</u></p> <p>10 ROSS STORES, INC.</p> <p>11 By: </p> <p>12 Mark LeHocky<br/>13 Senior Vice President<br/>14 and General Counsel</p>  |
| <p>14 <b>APPROVED AS TO FORM:</b></p> <p>15 Date: _____</p> <p>16 HIRST &amp; CHANLER LLP</p> <p>17</p> <p>18 By: _____</p> <p>19 George W. Dowell<br/>20 Attorneys for Plaintiff<br/>21 WHITNEY R. LEEMAN, Ph.D.</p> | <p>14 <b>APPROVED AS TO FORM:</b></p> <p>15 Date: <u>12-17-07</u></p> <p>16 FULBRIGHT &amp; JAWORSKI LLP</p> <p>17</p> <p>18 By: </p> <p>19 Jeffrey B. Margulies<br/>20 Attorneys for Defendant<br/>21 ROSS STORES, INC.</p> |

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3 **14. AUTHORIZATION**

4 14.1 The undersigned are authorized to execute this Consent Judgment on behalf of  
5 their respective Parties and have read, understood, and agree to all of the terms and conditions of  
6 this Consent Judgment.

|   |   |
|---|---|
| <p>7</p> <p>8 <b>AGREED TO:</b></p> <p>9 Date: <u>12/16/07</u></p> <p>10 By: <u>Whitney R. Leeman</u></p> <p>11 WHITNEY R. LEEMAN, Ph.D.</p>  | <p>8 <b>AGREED TO:</b></p> <p>9 Date: _____</p> <p>10 By: _____</p> <p>11 ROSS STORES, INC.</p>   |
| <p>12</p> <p>13 <b>APPROVED AS TO FORM:</b></p> <p>14 Date: <u>12/17/07</u></p> <p>15 HIRST &amp; CHANLER LLP</p> <p>16</p> <p>17 By: <u>George W. Dowell</u></p> <p>18 George W. Dowell</p> <p>19 Attorneys for Plaintiff</p> <p>20 WHITNEY R. LEEMAN, Ph.D.</p> | <p>13 <b>APPROVED AS TO FORM:</b></p> <p>14 Date: _____</p> <p>15 FULBRIGHT &amp; JAWORSKI LLP</p> <p>16</p> <p>17 By: _____</p> <p>18 Jeffrey B. Margulies</p> <p>19 Attorneys for Defendant</p> <p>20 ROSS STORES, INC.</p> |

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