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# 60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

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February 7, 2003

To: California Attorney General's Office;  
District Attorney's Office for 58 Counties;  
City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles;  
Marsha M. Everton, President – The Pfaltzgraff Company  
William H. Simpson, President – Susquehanna Pfaltzgraff Co.  
Allen Questrom, President – J.C. Penney Company, Inc.  
Steve Silverstein, President – Linens 'N Things, Inc.

From: Dr. Whitney R. Leeman

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## INTRODUCTION

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My name is Whitney R. Leeman. I hold a Doctor of Philosophy degree in Environmental Engineering. I am a citizen of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This letter is provided to the parties listed above pursuant to California Health & Safety Code §25249.6 *et seq.* ("Proposition 65"). As required, notice is also being provided to the violators, The Pfaltzgraff Company, Susquehanna Pfaltzgraff Co., J.C. Penney Company, Inc. and Linens 'N Things, Inc. (the "Violators"). The violations covered by this notice consist of the routes of exposures and type of harm potentially resulting from such exposure to the following toxic chemical or chemicals ("listed chemicals"):

<u>LISTED CHEMICALS</u>	<u>ROUTES OF EXPOSURE</u>	<u>TYPES OF HARM</u>
Lead and lead compounds (hereafter "lead")	Ingestion, Dermal	Birth Defects and Other Reproductive Harm

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## NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

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The specific type or types of products (hereafter the "products") that are causing consumer and occupational exposures in violation of Proposition 65 (and that are covered by this notice) are listed on Exhibit A. The Violators' sales of these glassware products have been occurring from February 7, 2000 to the present. As a result of the sales of these products, exposures to the listed chemicals have been

occurring without clear and reasonable warnings as required by Proposition 65. Without proper warnings regarding the toxic effects of exposures to the listed chemicals produced by the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemicals from reasonably foreseeable use of the products.

### *CONSUMER PRODUCT EXPOSURE*

California consumers, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemicals. For example, exposures occur when California citizens use, display, clean, repair, pack, unpack, assemble, disassemble, arrange, store or otherwise handle the products. These tasks cause consumers to be exposed through the routine touching of the parts or portions of the products containing readily available surface lead/lead compounds. Additionally, exposure can occur through the routine touching of other materials that are contaminated with the lead/lead compounds as a result of these tasks. People likely to be exposed include both children and adults.

### *OCCUPATIONAL EXPOSURE*

Similarly, men and women in California use the products as a part of their jobs and are, therefore, subject to occupational exposures to the listed chemicals. Employees are exposed at the California business locations of the apparent manufacturer, distributor and retailer (and their agents, assigns and divisions) as well as all other California locations where the products, or the component parts thereof that include the listed chemicals, are used, packed, unpacked, labeled, assembled, disassembled, arranged, displayed, cleaned, stocked, stored, repaired or otherwise handled. These tasks cause employee exposure through the routine touching of the parts or portions of the products containing readily available surface lead/lead compounds. Additionally, exposure can occur through the routine touching of other materials that are contaminated with the lead/lead compounds as a result of these tasks. These products are also used by sole proprietors and other persons in settings not covered by the OSH Act. This notice alleges the violation of Proposition 65 with respect to occupational exposure governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 6, 1997. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirement to comply with Proposition 65. It also requires that supplemental

enforcement is subject to the supervision of the California Occupational Safety and Health Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

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### **CONTACT INFORMATION**

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Please direct all questions concerning this notice to my counsel at the following address:

Gregory M. Sheffer, Esq.  
Sheffer & Chanler LLP  
160 Sansome Street, 2<sup>nd</sup> Floor  
San Francisco, CA 94104  
Telephone: (415) 434-9111  
Facsimile: (415) 434-9115

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### **PROPOSITION 65 INFORMATION**

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For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900. For the Violators' reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

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### **ADDITIONAL NOTICE INFORMATION**

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*THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER CAL. CODE REGS., TITLE 22 § 12903(b)(4).*

Specific examples of the type of offending products identified herein (#047-614-00/#025398474554; #247-168-00/#025398395361; #047-210-00/#025398397693; #047-616-00/#025398474578) were recently purchased and witnessed being available for purchase or use in California at retail stores owned or controlled by J.C. Penney Company, Inc. in Alameda and Contra Costa counties, Northern California; at Linens 'N Things, Inc. in Santa Clara County, Northern California; and at an internet website owned or controlled by The Pfaltzgraff Company and Susquehanna Pfaltzgraff Co. Based on publicly available information, The Pfaltzgraff Company and Susquehanna Pfaltzgraff Co. are manufacturers and retailers of the products at issue; and J.C. Penney Company, Inc. and Linens 'N Things, Inc. are retailers of the products at issue.

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## EXHIBIT A

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### PRODUCTS

Coolers, Iced Beverages and Other Glassware  
with Colored Designs on the Exterior (containing  
lead)

*\*Such as:*

Orleans Set/4 Coolers 15 oz.      #047-614-00  
#025398474554

Rio Set/4 Coolers 16 oz.      #247-168-00  
#025398395361

Cloverhill Cooler 18 oz.      #047-210-00  
#025398397693

Orleans Set/4 Iced Beverages      #047-616-00  
#025398474578

### TOXINS

Lead and lead compounds

*\* These specifically identified examples of the type of products subject to this Notice are for the recipient's benefit and are not meant to be an exhaustive or comprehensive identification of each specific offending product.*

# PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is 160 Sansome Street, 2<sup>nd</sup> Floor, San Francisco, CA 94104.

On February 7, 2003, I served the following document:

**60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH  
HEALTH & SAFETY CODE §25249.7(d);**

**CERTIFICATE OF MERIT; AND**

**CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE  
ATTORNEY GENERAL)**

served on the Violators listed below via 2<sup>nd</sup> Day Air Service by placing a true and correct copy in a sealed envelope, addressed to each Violator and placing each envelope in a United Parcel Service Drop-Off Box:

Marsha M. Everton, President  
The Pfaltzgraff Company  
140 E Market St.  
York, PA 17401

William H. Simpson, President  
The Pfaltzgraff Company  
140 E Market St.  
York, PA 17401

Allen Questrom, President  
J.C. Penney Company, Inc.  
6501 Legacy Drive  
Plano, TX 75024

Steve Silverstein, President  
Linens 'N Things  
6 Brighton Rd.  
Clifton, NJ 07015

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Via 2<sup>nd</sup> Day Air Service by placing such envelope in a UPS Drop-Off Box:</i>	The Attorney General of the State of California;
<i>By placing each envelope in a United States Postal Service mailbox, first class postage prepaid:</i>	The District Attorney for Each of the 58 counties in California; and  The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento;

*A list of addresses for each of these recipients is attached.*

Executed on February 7, 2003, at San Francisco, California.

The Honorable Tom Orloff  
Alameda County District Attorney  
1225 Fallon Street, Room 900  
Oakland, CA 94612

The Honorable Todd Riebe  
Amador County District Attorney  
708 Court Street, #202  
Jackson, CA 95642

The Honorable L. Alan Turner  
Alpine County District Attorney  
P.O. Box 248  
Markleeville, CA 96120

The Honorable Michael Ramsey  
Butte County District Attorney, Admin.  
Bldg.  
25 County Center Drive  
Oroville, CA 95965

The Honorable Jeffrey Tuttle  
Calaveras County District Attorney  
Government Center  
San Andreas, CA 95249

The Honorable John R. Poyner  
Colusa County District Attorney  
547 Market Street  
Colusa, CA 95932

The Honorable Gary T. Yancy  
Contra Costa County District Attorney  
P.O. Box 670  
Martinez, CA 94553

Robert J. Drossel  
Del Norte County District Attorney  
450 H Street  
Crescent City, CA 95531

The Honorable Gary Lacy  
El Dorado County District Attorney  
515 Main Street  
Placerville, CA 95667

The Honorable Edward Hunt  
Fresno County District Attorney  
2220 Tulare Street, #1000  
Fresno, CA 93721

The Honorable Robert Holzzapfel  
Glenn County District Attorney  
P.O. Box 430  
Willows, CA 95988

The Honorable Terry R. Farmer  
Humboldt County District Attorney  
825 5th Street  
Eureka, CA 95501

The Honorable Gilbert G. Otero  
Imperial County District Attorney  
939 West Main Street  
El Centro, CA 92243

The Honorable Philip McDowell  
Inyo County District Attorney  
P.O. Drawer D  
Independence, CA 93526

The Honorable Edward R. Jagels  
Kern County District Attorney  
1215 Truxtun Avenue  
Bakersfield, CA 93301

The Honorable Ronald Calhoun  
Kings County District Attorney  
1400 West Lacey Boulevard  
Hanford, CA 93230

The Honorable Gary Luck  
Lake County District Attorney  
255 N. Forbes Street  
Lakeport, CA 95453

The Honorable Robert Burns  
Lassen County District Attorney  
220 S. Lassen Street, Courthouse  
Susanville, CA 96130

The Honorable Steve Cooley  
Los Angeles County District Attorney  
210 West Temple Street, Suite 18000  
Los Angeles, CA 90012

The Honorable Ernest LiCalsi  
Madera County District Attorney  
209 West Yosemite Avenue  
Madera, CA 93637

The Honorable Paula Kamena  
Marin County District Attorney  
3501 Civic Center Drive, Room 183  
San Rafael, CA 94903

The Honorable Christine Johnson  
Mariposa County District Attorney  
P.O. Box 748  
Mariposa, CA 95338

The Honorable Norman L. Vroman  
Mendocino County District Attorney  
P.O. Box 1000  
Ukiah, CA 95482

The Honorable Gordon Spencer  
Merced County District Attorney  
2222 M Street  
Merced, CA 95340

The Honorable Tom Buckwalter  
Modoc County District Attorney  
P.O. Box 1171  
Alturas, CA 96101

The Honorable George Booth  
Mono County District Attorney  
P.O. Box 617  
Bridgeport, CA 93517

The Honorable Dean Filippo  
Monterey County District Attorney  
240 Church Street  
Salinas, CA 93901

The Honorable Gary Lieberstein  
Napa County District Attorney  
931 Parkway Mall  
Napa, CA 94559

The Honorable Mike Ferguson  
Nevada County District Attorney  
201 Church Street, Suite 8  
Nevada City, CA 95959

The Honorable Tony Rackauckas  
Orange County District Attorney  
700 Civic Center Drive West, 2nd Floor  
Santa Ana, CA 92701

The Honorable Brad Fennocchio  
Placer County District Attorney  
11562 B Avenue, DeWitt Center  
Auburn, CA 95603

The Honorable James Reichle  
Plumas County District Attorney  
520 Main Street, Room 404  
Quincy, CA 95971

The Honorable Grover C. Trask II  
Riverside County District Attorney  
4075 Main Street, 1st Floor  
Riverside, CA 92501

The Honorable Jan Scully  
Sacramento County District Attorney  
P.O. Box 749  
Sacramento, CA 95814

The Honorable Harry J. Damkar  
San Benito County District Attorney  
419 4th Street  
Hollister, CA 95023-3801

The Honorable Dennis Stout  
San Bernardino County District Attorney  
316 N. Mountain View Avenue  
San Bernardino, CA 92415

The Honorable Paul Pfingst  
San Diego District Attorney  
330 W. Broadway, Suite 1320  
San Diego, CA 92112

The Honorable Terence Hallinan  
San Francisco County District Attorney  
880 Bryant Street  
San Francisco, CA 94103

The Honorable John Phillips  
San Joaquin County District Attorney  
P.O. Box 990  
Stockton, CA 95201

The Honorable Gerald Shea  
San Luis Obispo County District Attorney  
1050 Monterey Street, Room 450  
San Luis Obispo, CA 93408

The Honorable James P. Fox  
San Mateo County District Attorney  
400 County Center, Third Floor  
Redwood City, CA 94063

The Honorable Thomas W. Sneddon, Jr.  
Santa Barbara County District Attorney  
1105 Santa Barbara Street  
Santa Barbara, CA 93101

The Honorable George Kennedy  
Santa Clara County District Attorney  
70 West Hedding Street, West Wing  
San Jose, CA 95110

The Honorable Kate Canlis  
Santa Cruz County District Attorney  
701 Ocean Street  
Santa Cruz, CA 95061

The Honorable McGregor Scott  
Shasta County District Attorney  
1525 Court Street, Third Floor  
Redding, CA 96001

The Honorable Sharon O'Sullivan  
Sierra County District Attorney  
Courthouse, P.O. Box 457  
Downieville, CA 95936

The Honorable Pete Knoll  
Siskiyou County District Attorney  
P.O. Box 986  
Yreka, CA 96097

The Honorable David Paulson  
Solano County District Attorney  
600 Union Avenue  
Fairfield, CA 94533

The Honorable Mike Mullins  
Sonoma County District Attorney  
600 Administration Drive, Room 212  
Santa Rosa, CA 95403

The Honorable Jim Brazelton  
Stanislaus County District Attorney  
1100 I Street, Room 220, P.O. Box 442  
Modesto, CA 95353

The Honorable Carl V. Adams  
Sutter County District Attorney  
446 Second Street  
Yuba City, CA 95991

The Honorable Gregg Cohen  
Tehama County District Attorney  
P.O. Box 519  
Red Bluff, CA 96080

The Honorable David L. Cross  
Trinity County District Attorney  
P.O. Box 310  
Weaverville, CA 96093

The Honorable Phil Cline  
Tulare County District Attorney  
221 S. Mooney Blvd., Ste. 224  
Visalia, CA 93291

The Honorable Donald I. Segerstrom  
Tuolumne County District Attorney  
2 South Green  
Sonora, CA 95370

The Honorable Michael Bradbury  
Ventura County District Attorney  
800 South Victoria Avenue  
Ventura, CA 93009

The Honorable David C. Henderson  
Yolo County District Attorney  
301 Second Street  
Woodland, CA 95695

The Honorable Patrick McGrath  
Yuba County District Attorney  
215 Fifth Street  
Marysville, CA 95901

Mr. Rockard J. Delgadillo  
City of Los Angeles City Attorney  
200 North Main Street  
Los Angeles, CA 90012

San Jose City Attorney's Office  
151 West Mission Street  
San Jose, CA 95110

The Honorable Casey G. Gwinn  
San Diego City Attorney's Office  
1200 3rd Avenue, Ste. 1620  
San Diego, CA 92101

Samuel L. Jackson  
Sacramento City Attorney's Office  
980 Ninth Street, 10th Floor  
Sacramento, CA 95814

Dennis J. Herrera  
San Francisco City Attorney's Office  
City Hall, Room 234  
San Francisco, CA 94102

Office of the California Attorney General  
Proposition 65 Enforcement Reporting  
Attention: Prop 65 Coordinator  
1515 Clay Street, 20th Floor  
P.O. Box 70550  
Oakland, CA 94612-0550

# CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Gregory M. Sheffer, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the parties identified in the notice has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the *alleged* exposure to the listed chemicals that are the subject of this action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code §25249.7(h)(2) (i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.)

Dated: 2/6/03