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10 Attorneys for Defendants
11 MONOGRAM INTERNATIONAL, INC. and
UNITED PACIFIC DISTRIBUTORS, INC.
12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 FOR THE CITY AND COUNTY OF SAN FRANCISCO
15 UNLIMITED CIVIL JURISDICTION
16

17 WHITNEY R. LEEMAN, PH.D)
18)
19 Plaintiff,)
20 v.)
21 MONOGRAM INTERNATIONAL, INC.)
22 UPD, INC.; UNITED PACIFIC)
DISTRIBUTORS, INC.; and DOES 1 through)
23 150,)
24 Defendants.)
_____)

Case No. CGC-05-446-008
**STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT**

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman,
4 Ph.D. (hereinafter “Leeman” or “Plaintiff”) and defendants Monogram International, Inc. and
5 United Pacific Distributors, Inc. (hereinafter “Defendants”), with Leeman and Defendants
6 collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

8 Leeman is an individual residing in California who seeks to promote awareness of
9 exposures to toxic chemicals and improve human health by reducing or eliminating hazardous
10 substances contained in consumer products.

11 **1.3 Defendants**

12 Defendants each employ ten or more persons and is a person in the course of doing
13 business for purposes of Proposition 65.

14 **1.4 General Allegations**

15 Leeman alleges that Defendants have manufactured, distributed and/or sold in the State of
16 California certain mugs and other ceramic containers intended for the consumption of food or
17 beverages with colored artwork or designs (containing lead) on the exterior. Lead is listed
18 pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
19 Safety Code §§25249.5 et seq. (“Proposition 65”), as a chemical known to the State of California
20 to cause birth defects and other reproductive harm. Lead shall be referred to herein as the “Listed
21 Chemical.”

22 **1.5 Product Description**

23 The products that are covered by this Consent Judgment are defined as follows: mugs and
24 other ceramic containers intended for the consumption of food or beverages with colored artwork
25 or designs (containing lead) on the exterior. All such mugs and other ceramic containers intended
26 for the consumption of food or beverages with colored artwork or designs (containing lead) on the
27 exterior shall be referred to herein as the “Products.”

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1 1.6 Notices of Violation

2 On or about August 18, 2005, Leeman served Defendants and various public enforcement
3 agencies with a document entitled “60-Day Notice of Violation” (the “Notice”) that provided
4 Defendants and such public enforcers with notice that alleged that Defendants were in violation
5 of California Health & Safety Code §25249.6 for failing to warn consumers and customers that
6 the Products that Defendants sold exposed users in California to the Listed Chemical.

7 1.7 Complaint

8 On October 25, 2005, Leeman, who is acting in the interest of the general public in
9 California, filed a complaint (hereafter referred to as the “Complaint” or the “Action”) in the
10 Superior Court in and for the City and County of San Francisco against Monogram International,
11 Inc., UPD, Inc., United Pacific Distributors, and Does 1 through 150, alleging violations of
12 Health & Safety Code §25249.6 based on the alleged exposures to the Listed Chemical contained
13 in the Products sold by Defendants.

14 1.8 No Admission

15 Defendants deny the material factual and legal allegations contained in Leeman’s Notice
16 and Complaint and maintain that all products that they have sold and distributed in California,
17 including the Products, have been and are in compliance with all laws. Nothing in this Consent
18 Judgment shall be construed as an admission by Defendants of any fact, finding, issue of law, or
19 violation of law, nor shall compliance with this Consent Judgment constitute or be construed as
20 an admission by Defendants of any fact, finding, conclusion, issue of law or violation of law,
21 such being specifically denied by Defendants. However, this Section shall not diminish or
22 otherwise affect the obligations, responsibilities and duties of Defendants under this Consent
23 Judgment.

24 1.9 Consent to Jurisdiction

25 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
26 jurisdiction over Defendants as to the allegations contained in the Complaint, that venue is proper
27 in the County of San Francisco and that this Court has jurisdiction to enter and enforce the
28 provisions of this Consent Judgment.

1 page and in close proximity to the display and/or description of the Product. On each page where
2 the Designated Symbol appears, Defendants must provide a header or footer directing the
3 consumer to the warning language and definition of the Designated Symbol.

4 If Defendants elect to provide warnings in the mail order catalog, then the warnings must
5 be included in all catalogs offering to sell one or more Products printed after September 15, 2006.

6 (2) **Internet Web Sites and Pages.** A warning may be given in
7 conjunction with the sale of a Product via the internet, provided it appears either: (a) on the same
8 web page on which the Product is displayed; (b) on the same web page as the order form for the
9 Product; (c) on the same page as the price for any Product; or (d) on one or more web pages
10 displayed to a purchaser during the checkout process. The following warning statement shall be
11 used and shall appear in any of the above instances adjacent to or immediately following the
12 display, description, or price of the Product for which it is given in the same type size or larger as
13 the product description text:

14 **WARNING:** The materials used on this product contains lead, a
15 chemical known to the State of California to cause
birth defects and other reproductive harm.

16 Alternatively, the Designated Symbol may appear adjacent to or immediately following the
17 display, description or price of the Product for which a warning is being given, provided that the
18 following warning statement also appears elsewhere on the same web page:

19 **WARNING:** Products identified on this page with the following
20 symbol use materials that contains lead, a chemical
21 known to the State of California to cause birth
defects and other reproductive harm: [show
Designated Symbol]

22 (3) **Package Insert or Label.** For all Products sold by catalog
23 or via the internet, a warning may be provided with the Product when it is shipped directly to an
24 individual in California, by either: (a) affixing the following warning language to the packaging,
25 labeling or directly to a specific Product;² (b) inserting a warning card measuring at least 4" x 6"

27 _____
28 ² A warning statement or sticker placed on the bottom of the product packaging is deemed an inadequate warning for
purposes of this Consent Judgment.

1 exterior surface of the Covered Product.

2 "Lip and Rim Area" is defined as the exterior top 20 millimeters of a hollowware
3 Glassware or Ceramicware Food/Beverage Product, as defined by American Society of Testing
4 and Materials Standard Test Method C927-99.

5 "No Detectable lead or cadmium" shall mean that neither lead nor cadmium is detected at
6 a level above two one-hundredths of one percent (0.02%) of lead or eight one-hundredths of one
7 percent (0.08%) of cadmium by weight, respectively, using a sample size of the materials in
8 question measuring approximately 50-100 mg and a test method of sufficient sensitivity to
9 establish a limit of quantitation of less than 200 ppm.⁴

10 (i) **Decorating Material Content-Based Standard.** The Exterior
11 Decorations, exclusive of the Lip and Rim Area, must only utilize decorating materials that
12 contain six one-hundredths of one percent (0.06%) of lead by weight or less and forty-eight one-
13 hundredths of one percent (0.48%) of cadmium by weight or less, as measured either before or
14 after the material is fired onto (or otherwise affixed to) the Product, using EPA Test Method
15 3050B.⁵

16 (ii) **Lip and Rim Area Exterior Decoration.** If the Ceramicware
17 Food/Beverage Product contains Exterior Decorations in the Lip and Rim Area:

18 (1) Any Exterior Decorations that extend into the Lip and Rim
19 Area must only utilize decorating materials that contain No Detectable lead or cadmium or

20 (2) The Ceramicware Food/Beverage Product must yield a test
21 result showing a concentration level of 0.5 ug/ml or less of lead and a result of 4.0 ug/ml or less
22 of cadmium using ASTM method C 927-99.⁶

23 **2.4 Reformulation Commitment**

24 Defendants hereby commit that all Products that they offer for sale in California after July

25 ⁴ If the decoration is tested after it is affixed to the Covered Product, the percentage of the Listed Chemical by
26 weight must relate only to the decorating material and must not include any quantity attributable to non-decorating
material (e.g., the glass substrate).

27 ⁵ If the decoration is tested after it is affixed to the Covered Product, the percentage of the Listed Chemical by
weight must relate only to the decorating material and must not include any quantity attributable to non-decorating
material (e.g., the ceramicware substrate).

28 ⁶ This subsection 2.3.2(b)(ii) is only appropriate for ceramic hollowware.

1, 2007 shall qualify as Reformulated Products.

3. MONETARY PAYMENTS

3.1 Penalties Pursuant to Health & Safety Code §25249.7(b)

The total civil penalty shall be \$100,000, which shall be paid by Defendants as set forth herein. Pursuant to Health & Safety Code §25249.7(b), Defendants shall each pay the \$100,000 in civil penalties in two installments. Each Defendant shall pay \$10,000 into the Fulbright & Jaworski L.L.P. Client Trust Fund on or before August 31, 2006, for a total payment of \$20,000, which shall be delivered to plaintiff's counsel within two days after service by electronic mail on counsel for Defendants of notice of approval of this Consent Judgment by the court. The second installment, consisting of a payment of \$40,000 per defendant shall be payable July 25, 2007.

The second payment shall be waived in the event that the defendant liable for the payment certifies in writing under penalty of perjury with supporting facts and documentation, not later than July 8, 2007, that it has complied with the Reformulation Commitment set forth in Section 2.4. Payments pursuant to this section 3.1 shall be made payable to "HIRST & CHANLER LLP in Trust For Whitney R. Leeman" and shall be delivered to plaintiff's counsel at the following address:

HIRST & CHANLER LLP
Attn: Proposition 65 Controller
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

3.2 Apportionment of Penalties Received

All penalty monies received shall be apportioned by Leeman in accordance with Health & Safety Code §25192, with 75% of these funds remitted by Leeman to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies retained by Leeman as provided by Health & Safety Code §25249.12(d). Leeman shall bear all responsibility for apportioning and paying to the State of California the appropriate civil penalties paid in accordance with this Section.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties acknowledge that Leeman and her counsel offered to resolve this dispute

1 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
2 this fee issue to be resolved after the material terms of the agreement had been settled.

3 Defendants then expressed a desire to resolve the fee and cost issue shortly after the other
4 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
5 the compensation due to Leeman and her counsel under the private attorney general doctrine
6 codified at California Code of Civil Procedure §1021.5 for all work performed through the
7 Court's approval of this agreement. Under the private attorney general doctrine, Defendants shall
8 reimburse Leeman and her counsel for fees and costs incurred as a result of investigating,
9 bringing this matter to Defendants' attention, litigating and negotiating a settlement in the public
10 interest and seeking the Court's approval of the settlement agreement. Defendants shall each pay
11 Leeman and her counsel \$22,500, for a total of payment of \$45,000 for all attorneys' fees, expert
12 and investigation fees, litigation and related costs. The payments shall be paid into the
13 Fulbright & Jaworski L.L.P. Client Trust Fund on or before August 31, 2006 by defendants, and
14 shall be delivered to plaintiff's counsel within two days after service by electronic mail on
15 counsel for Defendants of notice of approval of this Consent Judgment by the court at the
16 following address:

17 HIRST & CHANLER LLP
18 Attn: Proposition 65 Controller
19 2560 Ninth Street
20 Parker Plaza, Suite 214
21 Berkeley, CA 94710-2565

22 **5. RELEASE OF ALL CLAIMS**

23 **5.1 Release of Defendants and Downstream Customers**

24 In further consideration of the promises and agreements herein contained, and for the
25 payments to be made pursuant to Sections 3 and 4, Leeman, on behalf of herself, her past and
26 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
27 general public, hereby waives all rights to institute or participate in, directly or indirectly, any
28 form of legal action and releases all claims, including, without limitation, all actions, and causes
of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and

1 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
2 (collectively "Claims"), against Defendants and their distributors, wholesalers, licensors,
3 licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent
4 companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys,
5 representatives, shareholders, agents, and employees, and sister and parent entities, including but
6 not limited to Monogram Products (Hong Kong), Ltd. (collectively "Releasees"). This release is
7 limited to those claims that arise under Proposition 65, as such claims relate to alleged failure to
8 warn about exposures to or identification of the Listed Chemical contained in the Products sold
9 by Defendants.

10 This Consent Judgment is a full, final, and binding resolution between the Leeman and
11 Defendants, and their Releasees of any violation of Proposition 65, regarding exposure to lead
12 and cadmium arising in connection with the manufacture, sale, distribution, or use of Covered
13 Products sold by Defendants and their Releasees prior to the Effective Date, or any claim based
14 on the facts or conduct alleged in the Complaint, or facts similar to those alleged, whether based
15 on actions committed by Defendants or their Releasees. It is specifically understood and agreed
16 that the Parties intend that Defendants' compliance with the terms of this Consent Judgment
17 resolves all issues and liability, now and in the future (so long as Defendants complies with the
18 terms of the Consent Judgment) concerning Defendants and its Releasees' compliance with the
19 requirements of Proposition 65 as to the Listed Chemicals in the Products sold by Defendants.

20 5.2 Defendants' Release of Leeman

21 Defendants waive any and all claims against Leeman, her attorneys and other
22 representatives, for any and all actions taken or statements made (or those that could have been
23 taken or made) by Leeman and her attorneys and other representatives, whether in the course of
24 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
25 and/or with respect to the Products.

26 6. COURT APPROVAL

27 This Consent Judgment is not effective until it is approved and entered by the Court and
28 shall be null and void if, for any reason, it is not approved and entered by the Court within one

1 year after it has been fully executed by all Parties, in which event any monies that have been
2 provided to Plaintiff, or her counsel pursuant to Section 3 and/or Section 4 above, shall be
3 refunded within fifteen (15) days after receiving written notice from Defendants that the one-year
4 period has expired.

5 **7. SEVERABILITY**

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

9 **8. ATTORNEYS' FEES AND COSTS**

10 Except as specifically provided herein, each party shall be responsible for its own
11 attorney's fees, expert fees, investigative and other costs of litigation, and taxable costs.

12 In the event that, after Court approval, any dispute arises with respect to any provision of
13 this Consent Judgment or Defendants or any third party seeks modification of this Consent
14 Judgment the prevailing party shall be entitled to its reasonable attorneys' fees and costs.

15 **9. GOVERNING LAW**

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

22 **10. NOTICES**

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

27 To Defendants:

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1 Jeffrey B. Margulies
2 FULBRIGHT & JAWORSKI L.L.P.
3 555 South Flower Street, 41st Floor
4 Los Angeles, CA 90071

To Leeman:

5 Proposition 65 Controller
6 HIRST & CHANLER LLP
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710-2565

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

10 **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.

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

Leeman agrees to comply with the reporting form requirements referenced in Health & Safety Code §25249.7(f).

17 **13. ADDITIONAL POST EXECUTION ACTIVITIES**

Leeman and Defendants agree to 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, Plaintiff agrees to file a Motion to Approve the Agreement (“Motion”) within a reasonable period of time after the execution date. Plaintiff’s counsel shall prepare a declaration in support of the Motion which shall, inter alia, set forth support for the fees and costs to be reimbursed pursuant to section 4. Defendants shall have no additional responsibility to Plaintiff’s counsel pursuant to Code of Civil Procedure §1021.5 or otherwise with regard to reimbursement of any fees and costs incurred with respect to the preparation and filing of the Joint Motion and its supporting declaration or with regard to Plaintiff’s counsel appearing for a hearing thereon.

1 **14. MODIFICATION**

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

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15. **AUTHORIZATION**

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

AGREED TO:

AGREED TO:

Date: _____

Date: _____

By: _____
Plaintiff Whitney R. Leeman, Ph.D.

By: _____
Defendant Monogram International, Inc.

AGREED TO:

Date: 8/23/06

By: 
Defendant Unitec. Pacific Distributors, Inc.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: _____

Date: _____

HIRST & CHANLER LLP

FULBRIGHT & JAWORSKI L.L.P.

By: _____
Laralei S. Paras
Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D

By: _____
Jeffrey B. Margulies
Attorneys for Defendants
MONOGRAM INTERNATIONAL, INC.
and UNITED PACIFIC DISTRIBUTORS,
INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

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15. AUTHORIZATION

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

AGREED TO:

Date: _____

By: _____
Plaintiff Whitney R. Leeman, Ph.D.

AGREED TO:

Date: 23 August 2006

By: *Jess Schlee*
Defendant Monogram International, Inc.

AGREED TO:

Date: _____

By: _____
Defendant United Pacific Distributors, Inc.

APPROVED AS TO FORM:

Date: _____

HIRST & CHANLER LLP

By: _____
Laralei S. Paras
Attorneys for Plaintiff
WHITNEY R. LEEMAN, PH.D

APPROVED AS TO FORM:

Date: _____

FULBRIGHT & JAWORSKI L.L.P.

By: _____
Jeffrey B. Margulies
Attorneys for Defendants
MONOGRAM INTERNATIONAL, INC.
and UNITED PACIFIC DISTRIBUTORS,
INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

1 **15. AUTHORIZATION**

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

5 **AGREED TO:**

AGREED TO:

6 Date: _____

Date: _____

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8 By: _____
Plaintiff Whitney R. Leeman, Ph.D.

By: _____
Defendant Monogram International, Inc.

9 **AGREED TO:**
10 Date: _____

11 By:
12 Defendant United Pacific Distributors, Inc.

13 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

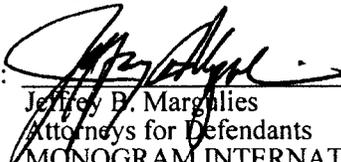
14 Date: _____

Date: 8/29/06

15 HIRST & CHANLER LLP

FULBRIGHT & JAWORSKI L.L.P.

16 By: _____
17 Laralei S. Paras
18 Attorneys for Plaintiff
19 WHITNEY R. LEEMAN, PH.D

By: 
Jeffrey B. Margulies
Attorneys for Defendants
MONOGRAM INTERNATIONAL, INC.
and UNITED PACIFIC DISTRIBUTORS,
INC.

20 **IT IS SO ORDERED.**

21 Date: _____

22 _____
23 JUDGE OF THE SUPERIOR COURT

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1 **15. AUTHORIZATION**

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

5 **AGREED TO:**
6 Date: 8/27/06

7 By: Whitney Leeman
8 Plaintiff Whitney R. Leeman, Ph.D.

AGREED TO:
Date: _____

By: _____
Defendant Monogram International, Inc.

AGREED TO:
Date: _____

By: _____
Defendant United Pacific Distributors, Inc.

11 **APPROVED AS TO FORM:**
12 Date: 8-29-06

13 HIRST & CHANLER LLP
14 By: [Signature]
15 Laralei S. Paras
16 Attorneys for Plaintiff
17 WHITNEY R. LEEMAN, PH.D.

APPROVED AS TO FORM:
Date: _____
FULBRIGHT & JAWORSKI L.L.P.
By: _____
Jeffrey B. Margulies
Attorneys for Defendants
MONOGRAM INTERNATIONAL, INC.
and UNITED PACIFIC DISTRIBUTORS,
INC.

20 **IT IS SO ORDERED.**

21 Date: _____

22 _____
23 JUDGE OF THE SUPERIOR COURT

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EXHIBIT A

The designated symbol that Defendants will use to identify Products containing the Listed Chemical which are sold through their catalogs or on their websites is:

