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18 MATEEL ENVIRONMENTAL JUSTICE FOUNDATION

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA

20 COUNTY OF SAN FRANCISCO

21 MATEEL ENVIRONMENTAL JUSTICE  
22 FOUNDATION,

23 Plaintiff,

24 vs.

25 HOME DEPOT U.S.A., INC.,

26 Defendant.

27 CASE NO. 07-461728

28 [PROPOSED] CONSENT JUDGMENT

CONSENT JUDGMENT

1 1. INTRODUCTION

2 1.1. On or about December 11, 2006, plaintiff MATEEL ENVIRONMENTAL JUSTICE  
3 FOUNDATION ("MEJF"), provided a 60-day notice of violation ("Notice") to the California  
4 Attorney General, the District Attorneys of every county in California, the City Attorneys of every  
5 California city with a population greater than 750,000, and defendant HOME DEPOT U.S.A., INC.  
6 ("Settling Defendant") alleging that Settling Defendant, through its sales in California of leaded  
7 crystal vessels, such as decanters, tumblers, wine glasses, champagne flutes, and cocktail glasses  
8 ("Covered Products"), was in violation of certain provisions of the Safe Drinking Water and Toxic  
9 Enforcement Act of 1986, Health and Safety Code § 25249.5, *et seq.* ("Proposition 65"), by  
10 knowingly and intentionally exposing persons to chemicals, including lead, known to the State of  
11 California to cause cancer and/or birth defects or other reproductive harm, without first providing a  
12 clear and reasonable warning.

13 1.2. On or about March 27, 2007, plaintiff MEJF, acting in the public interest pursuant to  
14 Health and Safety Code § 25249.7(d) ("Plaintiff"), filed a Complaint for Civil Penalties and  
15 Injunctive Relief in San Francisco County Superior Court, Case No. 461728 ("Complaint") against  
16 Settling Defendant, and other Defendants, based on the allegations contained in the Notice.

17 1.3. For purposes of this Consent Judgment only, the parties stipulate that this Court has  
18 jurisdiction over the allegations of violations contained in the Notices and Complaint and personal  
19 jurisdiction over Settling Defendant as to the acts alleged in the Complaint, that venue is proper in the  
20 County of San Francisco and that this Court has jurisdiction to enter this Consent Judgment as a full  
21 and final settlement and resolution of the allegations contained in the Complaint and of all claims  
22 which were or could have been raised based on the facts alleged therein or arising therefrom.

23 1.4. The parties enter into this Consent Judgment pursuant to a full and final settlement of  
24 disputed claims between the parties for the purpose of avoiding prolonged litigation. This Consent  
25 Judgment and compliance with it shall not constitute an admission with respect to any allegation  
26 made in the Notice or the Complaint, each and every allegation of which Settling Defendant denies,  
27 nor may this Consent Judgment or compliance with it be used as an admission or evidence of any  
28 fact, wrongdoing, misconduct, culpability or liability on the part of any Settling Defendant.

1 2. INJUNCTIVE RELIEF-CLEAR AND REASONABLE WARNINGS

2 2.1. Except as set forth below, within thirty (30) business days of the date notice of entry of  
3 this Consent Judgment is filed and served upon Settling Defendant, Settling Defendant shall provide  
4 Proposition 65 warnings for those Covered Products, and only those Covered Products, that are  
5 intended for use in storing or serving food or drink, in the manner provided for in this Paragraph 2.  
6 At the sole option of the Settling Defendant, warnings may be provided through either: (a) product  
7 labeling pursuant to Paragraph 2.2 or (b) point of sale warnings at any retail store as set forth in  
8 Paragraph 2.3 and warnings for any mail order or Internet sales as set forth in Paragraph 2.4.

9 2.2. Product Labeling: Settling Defendant may provide a warning affixed to the packaging or  
10 labeling of, or directly to, the Covered Product. The warning shall contain the same language as that  
11 appearing on Exhibit A. The warning must be affixed to the packaging, labeling, or the Covered  
12 Product in the condition the product is given to or chosen by the customer, and displayed in a size and  
13 manner that is likely to be read and understood by an ordinary individual under customary conditions  
14 of purchase.

15 2.3. Point-of-Sale Warnings: Settling Defendant may provide a warning by posting signs at  
16 every retail outlet it owns or principally operates in the State of California at which Covered Products  
17 are sold. Warning signs shall be displayed in plain view, as follows:

18 2.3.1. Department Stores or other stores with separate check-out for Covered  
19 Products. For a store selling Covered Products in a physically separate or distinct department or  
20 section, which contains sales registers within such department or section that are intended for  
21 purchase of items sold in that department or section, the warning may be provided, at the sole option  
22 of each Settling Defendant, through: (a) a 4-inch by 6-inch warning sign with the language in Exhibit  
23 B (or Exhibit C if any of the identified Baccarat products are sold at such store) at, on, or adjacent to  
24 each check-out counter, sales register, cash stand, or cash wrap in that section or department, or on a  
25 shelf where the Covered Product is displayed; or (b) as specified in Paragraph 2.3.2.

26 2.3.2. Large stores without a separate check-out for Covered Products. Any store  
27 that sells Covered Products and has more than 7,500 square feet of floor space and that uses one or  
28 more check-out stands for all merchandise purchased at the store, shall either: (a) post an 8-inch by

1 10-inch warning sign with the language in Exhibit B (or Exhibit C if any of the identified Baccarat  
2 products are sold at such store) at each location where Covered Products are displayed, in a manner  
3 such that any potential purchaser of Covered Products would be reasonably likely to see a warning  
4 sign, and the warning signs may be free-standing, placed on the wall, hung, or displayed in any  
5 manner; or (b) post a 4-inch by 6-inch warning sign with the language in Exhibit B (or Exhibit C if  
6 any of the identified Baccarat products are sold at such store) on a shelf where the Covered Product is  
7 displayed.

8           2.3.3. Small stores without a separate check-out for Covered Products. Any store  
9 that sells Covered Products and has less than 7,500 square feet of total floor space, and uses one or  
10 more check-out stands for all merchandise purchased at the store, shall post signs either: (a) at, on, or  
11 adjacent to each check-out counter, sales register, cash stand, or cash wrap in the store, or on a shelf  
12 where the Covered Product is displayed, in the manner provided for in Paragraph 2.3.1, or (b) at each  
13 location where Covered Products are displayed in the manner provided for in Paragraphs 2.3.2 above.

14           2.3.4. In lieu of the warning signs with the language in Exhibits B or C, but  
15 displayed in the same manner as set forth in Paragraphs 2.3.1 through 2.3.3, and at its sole option, a  
16 Settling Defendant may elect to combine any point-of-sale warning signs required pursuant to this  
17 Consent Judgment with any warnings it provides for ceramic tableware (as defined in the Consent  
18 Judgment in *People v. Josiah Wedgewood & Sons, Inc.*, attached hereto as Exhibit D) through use of  
19 the warning signs in the form of Exhibit E or Exhibit F. If Settling Defendant elects to provide  
20 combined warnings through use of Exhibit E, then Settling Defendant shall place the Designated  
21 Symbol (the yellow triangle shown in Exhibit D) next to each display of Covered Product or ceramic  
22 tableware for which a warning is given. If Settling Defendant elects to provide combined warnings  
23 through use of Exhibit F, the ceramic tableware products for which the warning is given shall be  
24 identified by manufacturer and pattern in the warning sign, and Designated Symbols need not be  
25 displayed. If Settling Defendant elects to combine its ceramic tableware and leaded crystal warnings  
26 under this Paragraph 2.3.4, display of warnings for both ceramic tableware and the Covered Products  
27 in the manner set forth in this Paragraph 2.3.4 shall constitute compliance with Proposition 65 for  
28 both products.

1           2.4. Mail Order and Internet Sales. Where Covered Products are available for sale by mail  
2 order or from the Internet to residents of the State of California, a warning shall be included, at  
3 Settling Defendant's sole option, either: (a) in the mail order catalog (if any) or on the website (if any)  
4 pursuant to Paragraphs 2.4.1 or 2.4.2; or (b) with the Covered Product when it is shipped to California  
5 customers pursuant to Paragraph 2.4.3. If Settling Defendant elects to provide warnings in the mail  
6 order catalog, then such warnings (at a location designated in Paragraph 2.4.1) shall be included in the  
7 galley prints of such catalogs sent to the printer at least ten (10) business days after notice of entry of  
8 this Consent Judgment is served on Settling Defendant. Nothing in this Paragraph 2 shall require that  
9 Settling Defendant provide warnings for any Covered Product ordered from a mail order catalog  
10 printed prior to the date notice of entry of this Consent Judgment is served on Settling Defendant, or  
11 modify any such mail order catalogs.

12           2.4.1. Mail Order Catalog. The warning message shall be stated within the catalog,  
13 either (a) on the inside front cover of any catalog, (b) on the same page as any order form, or (c) on  
14 the same page as the price, in the same type size as the surrounding, non-heading text, with the same  
15 language as that appearing on Exhibit G (or Exhibit H if any of the identified Baccarat products are  
16 sold in such catalog). In lieu of the warning language in Exhibits G or H, and at its sole option,  
17 Settling Defendant may elect to combine the warning message required by this Paragraph 2.4 with  
18 any warnings it provides for ceramic tableware through use of a warning message with the text of  
19 Exhibit E or Exhibit F. If Settling Defendant elects to provide combined warnings through use of the  
20 text of Exhibit E, then Settling Defendant shall place the Designated Symbol (the yellow triangle  
21 shown in Exhibit D) next to each display in the catalog of Covered Product or ceramic tableware for  
22 which a warning is given. If Settling Defendant elects to provide combined warnings through use of  
23 the text of Exhibit F, the ceramic tableware products for which the warning is given shall be identified  
24 by manufacturer and pattern in the warning sign, and Designated Symbols need not be displayed. If  
25 Settling Defendant elects to combine its ceramic tableware and leaded crystal warnings under this  
26 Paragraph 2.4.1, display of warnings for both ceramic tableware and the Covered Products in the  
27 manner set forth in this Paragraph 2.4.1 shall constitute compliance with Proposition 65 for both  
28 products.

1                   2.4.2.   Internet Web Sites. The warning message, or a link to a page containing the  
2 warning message, shall be displayed either (a) on the same page on which a Covered Product is  
3 displayed, (b) on the same page as any order form for a Covered Product, (c) on the same page as the  
4 price for any Covered Product, or (d) in any manner such that is likely to be read and understood by  
5 an ordinary individual under customary conditions of purchase of a Covered Product, including the  
6 same language as that appearing on Exhibit G (or Exhibit H if any of the identified Baccarat products  
7 are sold on such website). If a link is used, it shall state "California residents," and shall be of a size  
8 equal to the size of other links on the page. In lieu of the warning language in Exhibits G or H, and at  
9 its sole option, Settling Defendant may elect to combine the warning message required by this  
10 Paragraph 2.4 with any warnings it provides for ceramic tableware through use of a warning message  
11 with the text of Exhibit E or Exhibit F. If Settling Defendant elects to provide combined warnings  
12 through use of the text of Exhibit E, then Settling Defendant shall place the Designated Symbol (the  
13 yellow triangle shown in Exhibit D) next to each display on the website of Covered Product or  
14 ceramic tableware for which a warning is given. If Settling Defendant elects to provide combined  
15 warnings through use of the text of Exhibit F, the ceramic tableware products for which the warning  
16 is given shall be identified by manufacturer and pattern in the warning sign, and Designated Symbols  
17 need not be displayed. If Settling Defendant elects to combine its ceramic tableware and leaded  
18 crystal warnings under this Paragraph 2.4.2, display of warnings for both ceramic tableware and the  
19 Covered Products in the manner set forth in this Paragraph 2.4.2 shall constitute compliance with  
20 Proposition 65 for both products.

21                   2.4.3.   Package Insert or Label. Alternatively, a warning may be provided with the  
22 Covered Product when it is shipped, by (a) product labeling pursuant to Paragraph 2.2 above,  
23 (b) inserting a card or slip of paper measuring at least 4" x 6" in the shipping carton, or (c) including  
24 the warning on the packing slip or customer invoice identifying the Covered Product in lettering of  
25 the same size as the description of the Covered Product. The warning shall include the language  
26 appearing on Exhibit A or Exhibit F, and shall inform the consumer that he or she may return the  
27 product for a full refund within 30 days of receipt.

28

1        2.5. Any changes to the language, format, size, or posting location of the warning required by  
2 this paragraph shall only be made following receipt of written approval from the California Attorney  
3 General's office.

4        2.6. The obligations of this Paragraph 2 shall not apply to any retail outlet Settling Defendant  
5 owns or operates in the State of California which does not offer Covered Products for sale, or to any  
6 retail store a Settling Defendant owns or operates which is not located in the State of California, or to  
7 any retail outlet in the State of California that Settling Defendant does not own or principally operate.

8        2.7. The warning requirements contained in this Consent Judgment shall have no effect on  
9 Covered Products sold to or shipped by Settling Defendant to a customer outside of the State of  
10 California.

11 3.        MONETARY RELIEF

12        3.1. Within thirty (30) days after notice of entry of this Consent Judgment is filed and served  
13 on Settling Defendant, Settling Defendant shall pay the sum of \$15,000 to KPFA Radio in lieu of  
14 statutory penalties pursuant to Health & Safety Code Section 25249.7(b). This payment shall be  
15 mailed to the attention of William Verick, Klamath Environmental Law Center, 424 First Street,  
16 Eureka, California 95501.

17 4.        ATTORNEYS' FEES

18        4.1. Within thirty (30) days after notice of entry of this Consent Judgment is filed and served  
19 on Settling Defendant, Settling Defendant shall pay the sum of \$35,000 to the "Klamath  
20 Environmental Law Center" as reimbursement for costs and attorneys fees incurred by MEJF. The  
21 attorney's fees payment shall be mailed to the attention of William Verick, Klamath Environmental  
22 Law Center, 424 First Street, Eureka, California 95501.

23 5.        ENFORCEMENT OF JUDGMENT/STIPULATED REMEDIES

24        5.1. The terms of this Consent Judgment are enforceable by and among the parties hereto or,  
25 with respect to the injunctive relief provided for herein, by the California Attorney General.  
26 Enforcement of the injunctive relief provided for in Paragraph 2 shall be exclusively pursuant to the  
27 terms of this Paragraph 5.

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1           5.2. In the event that, at any time following ninety (90) days after notice of entry of this  
2 Consent Judgment by the Court is filed and served on Settling Defendant, MEJF and/or its attorneys,  
3 agents, assigns, or any other person acting in the public interest under Health & Safety Code  
4 § 25249.7(d) and/or Business & Professions Code § 17200 identifies one or more retail stores owned  
5 or principally operated by Settling Defendant in the State of California, one or more catalog sales to  
6 customers in the State of California, or one or more web site sales to customers in the State of  
7 California (hereinafter "retail outlet") for which the warnings for Covered Products required under  
8 Paragraph 2 are not being or were not given, MEJF or such person shall notify Settling Defendant in  
9 writing of such alleged failure(s) to warn (the "Probationary Notice of Default"). The Probationary  
10 Notice of Default shall be sent by first class mail, with proof of service, to the person(s) identified in  
11 Exhibit I to receive notices for Settling Defendant, and must be served within fifteen (15) days of the  
12 date the alleged violation(s) was or were observed. The Probationary Notice of Default shall, at a  
13 minimum, set forth the date(s) the alleged violation(s) was observed, the retail outlet(s) in question,  
14 and shall include both a description of the Covered Product(s) giving rise to the alleged violation(s)  
15 and a description of the alleged violation(s) with sufficient detail to allow Settling Defendant to  
16 determine the basis of the claim being asserted. The Probationary Notice of Default may also provide  
17 some other form of documentary evidence specifically in support of the allegation that the warnings  
18 required by Paragraph 2 above have not been posted or given as required herein. Such Probationary  
19 Notice of Default shall allege all violations that could have been raised with respect to each retail  
20 outlet in question as of the date of the Probationary Notice of Default.

21           5.3. In the event Settling Defendant corrects the alleged default(s) within sixty (60) days of  
22 receiving the Probationary Notice of Default, MEJF or the notifying person shall take no further  
23 enforcement action with respect to such violation(s). In the event Settling Defendant fails to correct  
24 such alleged default(s) within sixty (60) days following the Probationary Notice of Default from  
25 MEJF or the notifying person, and subject to the provisions of Paragraph 5.5, Settling Defendant shall  
26 pay to MEJF or the notifying person, as a stipulated penalty for failure to remedy the alleged  
27 default(s), the amount of \$500 for each retail outlet which was the subject of the Probationary Notice  
28 of Default, and where Settling Defendant failed to remedy such alleged default(s).



1           5.4. In the event MEJF or the notifying person identifies one or more possible defaults of the  
2 same type (but not necessarily at the same retail outlet) as that contained in a Probationary Notice of  
3 Default previously served under Paragraph 5.2 at any retail outlet owned or principally operated by  
4 Settling Defendant that received such Probationary Notice of Default within a six month period  
5 following the termination of a sixty (60) day period referred to in Paragraph 5.3, MEJF or the  
6 notifying person shall, within 15 days, provide Settling Defendant with a Notice of Default (which  
7 shall contain the same information required in the Probationary Notice of Default referenced in  
8 Paragraph 5.2). Subject to the provisions of Paragraph 5.6, upon receipt of such Notice of Default,  
9 Settling Defendant shall be liable for a stipulated penalty in the amount of \$500 per retail outlet at  
10 which MEJF or the notifying person identifies the default(s) described in the previous sentence,  
11 without need for any further notice or opportunity to correct being provided to Settling Defendant.

12           5.5. Once the six month period set forth in Paragraph 5.4 expires, then the provisions of  
13 Paragraphs 5.2 and 5.3 for a Probationary Notice of Default and a 60-day opportunity to cure any  
14 alleged default(s) without payment of a stipulated penalty again are effective until another  
15 Probationary Notice of Default is served and the 60-day opportunity to cure any alleged default(s)  
16 contained in such Probationary Notice of Default terminates. Upon termination of such 60-day  
17 period, then a new six month period as referenced in Paragraph 5.4 begins again. Each time the six  
18 month period referenced in Paragraph 5.4 ends, then a new period for a Probationary Notice of  
19 Default and 60-day opportunity to cure any alleged default(s) under Paragraphs 5.2 and 5.3 is  
20 available to Settling Defendant receiving a Notice of Default. Each time a new period for  
21 Probationary Notice of Default and 60-day opportunity to cure any default(s) ends, then a new six  
22 month period as referenced in Paragraph 5.4 begins. This process shall repeat itself indefinitely.

23           5.6. In the event that Settling Defendant wishes to contest the allegations contained in any  
24 Probationary Notice of Default served pursuant to Paragraph 5.2 or a Notice of Default served  
25 pursuant to Paragraph 5.4, it shall notify MEJF or the notifying person of such in writing within thirty  
26 (30) days of its receipt of the Notice of Default. Settling Defendant may provide any documentary  
27 evidence to MEJF or the notifying person in support of its position. In the event that, upon a good  
28 faith review of the evidence, MEJF or the notifying person agrees with Settling Defendant's position,

1 it shall take no further action hereunder. In the event that Settling Defendant provides documentary  
2 evidence, and MEJF or the notifying person disagrees with Settling Defendant's position, it shall,  
3 within thirty (30) days notify Settling Defendant of such and provide Settling Defendant, in writing,  
4 with the reasons for its disagreement. Thereafter, the parties shall meet and confer to attempt to  
5 resolve their dispute on mutually acceptable terms; if no such resolution results, (a) MEJF may by  
6 motion or order to show cause before the Superior Court of San Francisco, seek to enforce the terms  
7 and conditions contained in this Consent Judgment, or (b) MEJF or the notifying person may initiate  
8 an enforcement action for new violations pursuant to Health & Safety Code § 25249.7(d) and/or  
9 Business and Professions Code § 17204 without regard to the stipulated penalties provided for by  
10 Paragraphs 5.3 or 5.4.

11 5.7. In the event that MEJF and/or its attorneys agree to settle another actual or potential  
12 claim concerning the alleged failure of a retail outlet to provide adequate Proposition 65 warnings  
13 concerning its sale of leaded crystal products in California and the amount of any stipulated penalty  
14 specified for future violations is less than that specified in Paragraphs 5.3 and 5.4 above, the amounts  
15 specified in Paragraphs 5.3 and 5.4 above shall automatically be deemed to have been reduced to the  
16 amount of the stipulated penalty provided for in the settlement in question.

17 6. MATTERS COVERED BY THIS CONSENT JUDGMENT

18 6.1. As to Covered Products, this Consent Judgment is a full, final and binding resolution  
19 between the Plaintiff, acting on behalf of the public interest pursuant to Health and Safety Code §  
20 25249.7(d) and the general public pursuant to Business and Professions Code § 17204, on the one  
21 hand, and Settling Defendant, on the other hand, of any violation of Proposition 65 and/or the Unfair  
22 Competition Act, of all claims made or which could have been made in the Notice and/or the  
23 Complaint, and of any other statutory, regulatory or common law claim that could have been asserted  
24 against Settling Defendant and/or its affiliates, subsidiaries, divisions, successors, assigns,  
25 distributors, retailers, and/or customers for failure to provide clear, reasonable, and lawful warnings of  
26 exposure to lead contained in or otherwise associated with Covered Products manufactured, sold or  
27 distributed by, for, or on behalf of Settling Defendant. As to Covered Products, compliance with the  
28 terms of this Consent Judgment resolves any issue, now and in the future, concerning compliance by

1 Settling Defendant and/or its affiliates, subsidiaries, divisions, successors, and assigns with the  
2 requirements of Proposition 65 and the Unfair Competition Act with respect to the Covered Products.  
3 Notwithstanding any other provision of this Consent Judgment, no release is given, and no issue is  
4 resolved, as to any retail outlet in the State of California that is not subject to the warning obligations  
5 of Paragraph 2 above.

6 7. COMPREHENSIVE AND GLOBAL RELEASE

7 7.1. As to Covered Products, MEJF, for itself and, and as to matters referenced in the 60 Day  
8 Notice Letters, acting on behalf of the public interest pursuant to Health and Safety Code §  
9 25249.7(d) and the general public pursuant to Business and Professions Code § 17204, releases and  
10 forever discharges any and all claims against Settling Defendant and its past, present, and future  
11 parents, subsidiaries, divisions, affiliates, successors and predecessors arising from any violation of  
12 Proposition 65 or the Business and Professions Code, or any other statutory, common law or other  
13 claim, that was or could have been asserted against such Defendant based on the facts alleged in the  
14 Complaint, or facts similar to those alleged.

15 7.2. In furtherance of the parties' intention that this Consent Judgment shall be effective as a  
16 full and final accord, satisfaction and release as to Settling Defendant and its past, present, and future  
17 parents, subsidiaries, divisions, affiliates, successors and predecessors of and from any and all matters  
18 released hereunder, MEJF, on its own and on behalf of the public interest pursuant to Health and  
19 Safety Code § 25249.7(d) and the general public pursuant to Business and Professions Code § 17204,  
20 acknowledges familiarity and understanding of California Civil Code § 1542, which provides as  
21 follows:

22 A general release does not extend to claims which the creditor does not know or  
23 suspect to exist in his favor at the time of executing the release, which if known  
24 by him must have materially affected his settlement with the debtor.

25 To the extent that Section 1542 or any similar law or statute may otherwise apply to this Consent  
26 Judgment, MEJF hereby waives and relinquishes as to all matters released hereunder all rights and  
27 benefits it has, or may have, under Section 1542 or under the laws of any other jurisdiction to the  
28 same or similar effect. MEJF further acknowledges that, subsequent to the execution of this Consent

1 Judgment, it may discover claims that were unsuspected at the time this Consent Judgment was  
2 executed, and which might have materially affected its decision to execute this Consent Judgment, but  
3 nevertheless MEJF releases Settling Defendant and its past, present, and future parents, subsidiaries,  
4 divisions, affiliates, successors and predecessors of any from any and all such claims whether known  
5 or unknown, suspected or unsuspected, at the time of the execution of this Consent Judgment.  
6 Notwithstanding any other provision of this Consent Judgment, no release is given, and no issue is  
7 resolved, as to any retail outlet in the State of California that is not subject to the warning obligations  
8 of Paragraph 2 above.

9 8. APPLICATION OF JUDGMENT

10 8.1. The obligations of this Consent Judgment shall apply to and be binding upon all  
11 plaintiffs acting in the public interest pursuant to Health and Safety Code § 25249.7 and/or on behalf  
12 of the general public pursuant to Business and Professions Code § 17204, and Settling Defendant, and  
13 its successors or assigns. The terms of injunctive relief contained in this Consent Judgment were  
14 submitted to and discussed with the California Attorney General's office prior to the entry of this  
15 Consent Judgment by the Court.

16 9. MODIFICATION OF JUDGMENT

17 9.1. This Consent Judgment may be modified only upon written agreement of the parties and  
18 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as  
19 provided by law and upon entry of a modified Consent Judgment by the Court. Notwithstanding any  
20 other provision of law, or the refusal to consent thereto by MEJF, the warning provisions of Paragraph  
21 2 may be modified upon a showing that the Attorney General's office consents in writing to such  
22 modification. Any request to the Attorney General to modify this Consent Judgment must be  
23 simultaneously served on MEJF with an opportunity for MEJF to provide its views on any proposed  
24 modification to the Attorney General and to Settling Defendant.

25 10. NOTICE

26 10.1. When any Party is entitled to receive any notice or report under this Consent Judgment,  
27 the notice or report shall be sent by U.S. mail or overnight courier service to the persons listed on  
28 Exhibit I to this Consent Judgment.

1           10.2. Any Party may modify the person and address to whom notice is to be sent by sending  
2 each other Party notice in accordance with this Paragraph.

3 11.       AUTHORITY TO STIPULATE

4           11.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized by the  
5 party he or she represents to enter into this Consent Judgment and to execute it on behalf of the party  
6 represented and legally to bind that party.

7 12.       RETENTION OF JURISDICTION

8           12.1. This Court shall retain jurisdiction of this matter to implement this Consent Judgment.

9 13.       ENTIRE AGREEMENT

10          13.1. This Consent Judgment contains the sole and entire, agreement and understanding of the  
11 parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,  
12 commitments and understandings related hereto. No representations, oral or otherwise, express or  
13 implied, other than those contained herein have been made by any party hereto. No other agreements  
14 not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the  
15 parties.

16 14.       GOVERNING LAW

17          14.1. The laws of the State of California shall govern the validity, construction and  
18 performance of this Consent Judgment.

19 15.       EXECUTION IN COUNTERPARTS

20          15.1. This Consent Judgment may be executed in counterparts and/or by facsimile, which  
21 taken together shall be deemed to constitute one original document.

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2 16. COURT APPROVAL

3 16.1. If the Court does not approve this Consent Judgment, it shall be of no force or effect; and  
4 cannot be used in any proceeding for any purpose.

5 IT IS SO STIPULATED:

6 DATED: 12-18-07MATEEL ENVIRONMENTAL JUSTICE  
FOUNDATIONBy: William Verick

William Verick

for Plaintiff

MATEEL ENVIRONMENTAL  
JUSTICE FOUNDATION12 DATED: 12/16/07

HOME DEPOT U.S.A., INC.

By: Karen Snyder~~CORPORATE COUNSEL~~

15 APPROVED AS TO FORM

16 DATED: \_\_\_\_\_

KLAMATH ENVIRONMENTAL  
LAW CENTER

By: \_\_\_\_\_

William Verick

Attorneys for Plaintiff

MATEEL ENVIRONMENTAL  
JUSTICE FOUNDATION22 DATED: Dec. 10, 2007

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: Michael J. Steel

Michael J. Steel

Attorneys for Defendant

HOME DEPOT U.S.A., INC.

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**EXHIBIT A**

**WARNING LABEL LANGUAGE:**

Consuming foods or beverages that have been kept or served in leaded crystal products  
exposes you to lead, a chemical known to the State of California to cause birth defects and  
other reproductive harm.



**B**

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**EXHIBIT B**

Proposition 65 WARNING: Consuming foods or beverages that have been kept or served in  
leaded crystal products will expose you to lead, a chemical known to the State of California  
to cause birth defects or other reproductive harm.

**PROP 65**

# **WARNING**

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**Consuming foods or beverages that have been kept or served in leaded crystal products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm.**

**PROP 65**  
**WARNING**

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**Consuming foods or beverages that have been kept or served in leaded crystal products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm.**

C

**EXHIBIT C**

Proposition 65 WARNING: Consuming foods or beverages that have been kept or served in leaded crystal products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. This warning does not apply to Baccarat decanters, flacons, stoppered pitchers, mustard and jam pots.

**PROP 65**

# **WARNING**

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**Consuming foods or beverages that have been kept or served in leaded crystal products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm.\***

*\*This does not apply to: Baccarat decanters, flacons, stoppered pitchers, mustard and jam pots.*

**PROP 65**  
**WARNING**

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**Consuming foods or beverages that have been kept or served in leaded crystal products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm.\***

*\*This does not apply to: Baccarat decanters, flacons, stoppered pitchers, mustard and jam pots.*



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**EXHIBIT D**

*People v. Wedgewood* Consent Judgment

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19 COUNTY OF SAN FRANCISCO  
20

21 PEOPLE OF THE STATE OF CALIFORNIA ex.  
rel. DANIEL E. LUNGREN, Attorney  
22 General of the State of California,

23 Plaintiffs,

24 v.

25 JOSIAH WEDGWOOD & SONS, INC.; et al.,

26 Defendants.  
27

ENDORSED  
FILED  
San Francisco County Superior Court

JAN 15 1993

MICHAEL K. TAMONY, Clerk  
BY CYNTHIA S. HERBERT  
Deputy Clerk

No. 938430

CONSENT JUDGMENT AS TO  
DEFENDANTS WEDGWOOD  
USA, INC.; FITZ &  
FLOYD, INC.; ROYAL  
DOULTON USA, INC.;  
NORITAKE COMPANY, INC.;  
VILLEROY & BOCH  
TABLEWARE, LTD.;  
MIKASA; AMERICAN  
COMMERCIAL, INC.; THE  
PFALTZGRAFF COMPANY;  
PICKARD, INC.

1        1.    Introduction

2        1.1.    On November 12, 1991, the People of the State of  
3 California, ex rel. Daniel E. Lungren, ("People") filed a  
4 complaint for Civil Penalties and Injunctive Relief ("Complaint")  
5 in San Francisco County Superior Court. Wedgwood USA, Inc., Fitz  
6 & Floyd, Inc., Royal Doulton USA, Inc., Noritake Company, Inc.,  
7 Villeroy & Boch Tableware, Ltd., Mikasa, American Commercial  
8 Inc., Pickard, Inc., and The Pfaltzgraff Company ("Defendants")  
9 are Defendants named in the Complaint.

10       1.2.    Defendants are corporations that employ more than ten  
11 persons and offer ceramic dishes such as plates, bowls, and cups  
12 intended for the service or storage of food ("tableware") for  
13 sale within the State of California.

14       1.3.    People's Complaint alleges that Defendants have sold  
15 tableware containing lead as a constituent of glazes and other  
16 materials used in the manufacture of the tableware, that this  
17 lead leaches into foods stored or served in them, and that the  
18 resulting exposures violated provisions of the Safe Drinking  
19 Water and Toxic Enforcement Act of 1986, Health and Safety Code  
20 sections 25249.5 et seq. ("Proposition 65"), and Business and  
21 Professions Code sections 17200 et seq. ("Unfair Competition  
22 Act"), by knowingly and intentionally exposing persons to a  
23 chemical known to the State of California to cause reproductive  
24 toxicity, without first providing a clear and reasonable warning  
25 to such individuals.

26       1.4.    On November 12, 1991, the Environmental Defense Fund  
27 and Lloyd G. Connelly ("EDF"), filed a complaint against the same

1 group of Defendants as named in the People's Complaint, with  
2 similar material allegations of fact, but alleging a cause of  
3 action only under Business and Professions Code section 17200,  
4 the Unfair Competition Act. As stated below and evidenced by the  
5 signature of EDF, this Consent Judgment will resolve the claims  
6 raised in EDF's complaint.

7 1.5. For purposes of this Consent Judgment only, the  
8 parties stipulate that this Court has jurisdiction over the  
9 allegations of violations contained in the Complaint and personal  
10 jurisdiction over Defendants as to the acts alleged in the  
11 Complaint, that venue is proper in the County of San Francisco,  
12 and that this Court has jurisdiction to enter this Consent  
13 Judgment as a resolution of the allegations contained in the  
14 Complaint.

15 1.6. The parties enter into this Consent Judgment pursuant  
16 to a full settlement of disputed claims between the parties as  
17 alleged in the Complaint for the purpose of avoiding prolonged  
18 litigation. By execution of this Consent Judgment, Defendants do  
19 not admit any violations of Proposition 65 or the Unfair  
20 Competition Act and specifically deny that they have committed  
21 any such violation or that the present warning program is legally  
22 insufficient. Nothing in this Consent Judgment shall be  
23 construed as an admission by any Defendant of any fact, issue of  
24 law or violation of law, nor shall compliance with the Consent  
25 Judgment constitute or be construed as an admission by any  
26 Defendant of any fact, issue of law, or violation of law.  
27 Nothing in this Consent Judgment shall prejudice, waive or impair

1 any right, remedy or defense any Defendant may have in any other  
2 or future legal proceedings. However, this paragraph shall not  
3 diminish or otherwise affect the obligations, responsibilities  
4 and duties of any Defendant under this Consent Judgment.

5 2. Injunctive Relief: Clear and Reasonable Warnings.

6 2.1. Clear and reasonable warning that use of certain  
7 tableware exposes persons to a chemical known to the State of  
8 California to cause birth defects or other reproductive harm  
9 shall be provided under the circumstances and in the manner  
10 provided in this Consent Judgment. As of June 1, 1993 and  
11 continuing thereafter, said clear and reasonable warnings for all  
12 tableware for which warnings are required by this Consent  
13 Judgment ("Covered Tableware") shall be provided through the use  
14 of the Designated Symbol and Identifying Signs, as described  
15 below.

16 A. Identifying Signs and Designated Symbol

17 1. Identifying Signs. Each Identifying Sign shall be 8 1/2"  
18 by 11" in size and shall have the exact content, form, color and  
19 print style as Exhibit A.

20 2. Designated Symbol. The Designated Symbol shall appear  
21 exactly as shown in Exhibit B (3/4" high) and may appear on  
22 adhesive stickers, capable of adhering to an item of tableware, a  
23 placard, and a shelf. Except as otherwise provided in this  
24 Consent Judgment, any reproduction of the Designated Symbol must  
25 be in the same size and color as shown in Exhibit B. The  
26 Attorney General shall not agree to any settlement requiring the  
27 use of the Designated Symbol in giving a Proposition 65 warning

1 for exposures other than a consumer product exposure as defined  
2 under 22 CCR section 12601(b).

3 B. Covered Tableware Displayed in Retail Stores

4 1. Identifying Signs shall be placed in each California  
5 retail establishment in which any of Defendants' Covered  
6 Tableware is sold. Where a retail establishment sells only  
7 tableware that does not require a warning, it is not required to  
8 post the Identifying Sign. Identifying Signs shall not be  
9 covered or obscured, and shall be placed and displayed in a  
10 manner rendering them likely to be read and understood by an  
11 ordinary individual under customary conditions of purchase.  
12 Specifically, such signs shall be placed as follows:

13 a. Department Stores or other stores with separate  
14 check-out for tableware department: for a store selling  
15 tableware in a physically separate department or section, which  
16 contains cash registers within such department or section that  
17 are used primarily to purchase items sold in that department or  
18 section, signs shall be placed at each cash register in that  
19 section or department, and at a minimum of two additional  
20 locations where Covered Tableware is displayed within the section  
21 or department;

22 b. Large stores without a separate check-out for  
23 tableware department: any store that sells tableware and has  
24 more than 7,500 square feet of floor space and that uses one or  
25 more check-out stands for all merchandise purchased at the store,  
26 a single sign shall be posted at each location where Covered  
27 Tableware are displayed, plus as many additional signs as are

1 necessary to assure that any potential purchaser of tableware  
2 would be reasonably likely to see an Identifying Sign.

3 c. Small stores without a separate check-out for  
4 tableware department: any store that sells tableware and has less  
5 than 7,500 square feet of total floor space, and uses one or more  
6 check-out stands for all merchandise purchased at the store,  
7 shall post signs in the manner provided in (a) or (b) above.

8 2. The Designated Symbol shall be displayed in  
9 conjunction with the Covered Tableware, in any one or more of the  
10 following locations:

11 a. Affixed to every placard, "tent sign," shelf  
12 talker, or shelf sticker adjacent to the displayed article that  
13 identifies the brand name and pattern of the article displayed;  
14 or

15 b. Affixed to the displayed article of Covered  
16 Tableware on a part of the article where the symbol will be seen  
17 as the article is displayed; or

18 c. Affixed to the back of the displayed article of  
19 Covered Tableware, but only if the back of the article contains a  
20 sticker identifying the price or a sticker identifying the item  
21 or items available in the tableware pattern and listing their  
22 prices.

23 C. Covered Tableware for Sale in Retail Stores,  
24 But Not Displayed

25 Where Covered Tableware is available for sale in a retail  
26 store, but no article of the same pattern is displayed in the  
27 retail store, and instead is pictured in a catalog, brochure or



1 other graphic depiction available within the retail store, the  
2 warning shall be provided as follows:

3 1. Where the brochure or catalog contains the price, the  
4 following warning message shall be stated within the brochure or  
5 catalog, on the inside front cover, on the same page as any order  
6 form, or on the same page as the price, in at least 12 point  
7 type, with the Designated Symbol at least 3/4 inch: "Prop 65  
8 WARNING: Certain patterns of tableware for sale through this  
9 catalog will expose you to lead, a chemical known to the State of  
10 California to cause birth defects or other reproductive harm.  
11 Patterns identified with this symbol: [Designated Symbol] are the  
12 ones for which this warning is given." The Designated Symbol  
13 also shall be provided in conjunction with any picture or  
14 depiction of Covered Tableware, immediately following any text  
15 stating the name of the pattern in the same size as the name of  
16 the pattern.

17 2. Where such Covered Tableware is depicted in a brochure  
18 or catalog, but said brochure does not contain the price of the  
19 article, the warning message and Designated Symbol shall be  
20 provided on any price lists intended for display to the consumer.  
21 The warning message specified in Paragraph 2.1.C.1 shall be  
22 stated within the price list, either on the inside front cover or  
23 on the same page as the price, in at least 12 point type, with  
24 the Designated Symbol at least 3/4 inch. The Designated Symbol  
25 shall also be provided on the page where both the price and  
26 pattern name are provided, adjacent to the name of the pattern  
27 for which a warning is given, in the same size as the name of the

1 pattern. The Designated Symbol may be pri  
2 as used in the price list.

3 D. Mail Order Tableware

4 Where Covered Tableware is available  
5 to residents of the State of California, cl  
6 warning shall be provided by including a wa  
7 mail order catalog or brochure or with the C  
8 it is shipped to California customers, as fo

9 1. Mail Order Catalog or Brochure. :

10 message shall be stated within the catalog or brochure, on the  
11 inside front cover, on the same page as any order form, or on the  
12 same page as the price, in at least 12 point type with the  
13 Designated Symbol at least 3/4 inch: "Prop 65 WARNING: Use of  
14 certain ceramic tableware for sale in this catalog or brochure  
15 will expose you to lead, a chemical known to the State of  
16 California to cause birth defects or other reproductive harm.  
17 Patterns identified in this catalog or brochure with this symbol:  
18 [Designated Symbol] are the ones for which this warning is given.  
19 The Designated Symbol shall also be provided on the page where  
20 both the price and pattern name are provided, adjacent to the  
21 name of the pattern for which a warning is given, in the same  
22 size as the name of the pattern.

23 2. Package Insert or Label. Alternatively, a warning may  
24 be provided with the Covered Tableware when it is shipped, by  
25 (a) inserting a card or slip of paper measuring at least 4" by 6"  
26 in the shipping carton, (b) affixing a pressure-sensitive label  
27 measuring at least standard business-card size on the face of the

1 shipping carton, or (c) printing the warning on the packing slip  
2 or customer invoice identifying the Covered Tableware in  
3 lettering of the same size as the description of the Covered  
4 Tableware. The warning shall read as follows: "Prop 65 WARNING:  
5 Use of this product will expose you to lead, a chemical known to  
6 the State of California to cause birth defects or other  
7 reproductive harm. You may return this product for a full refund  
8 within 30 days of receipt, if you wish. You also may obtain a  
9 list of each pattern of ceramic tableware sold by this company  
10 for which the same warning is given." Upon request of the person  
11 receiving that warning, the mail order house shall provide a list  
12 of each pattern of tableware sold by that mail-order house for  
13 which a warning is required.

14 E. Restaurants and Other Food Service Establishments

15 Restaurants, hotels, and other food service establishments  
16 shall provide clear and reasonable warning, whenever Covered  
17 Tableware is used for service of food consumed by their  
18 customers, by posting an 8 1/2" by 11" sign with the exact content,  
19 form, color and print style as Exhibit C. The sign shall be  
20 printed on at least 65-pound cover stock.

21 2.2. No later than April 30, 1993, Defendants shall mail  
22 warning materials as described below:

23 A. Warning Materials for Retail Stores.

24 Defendants shall mail to the central purchasing office for  
25 all distributors and retail stores with whom they transact  
26 business for sale of Covered Tableware in California the  
27 following materials:

1           1.     At least five Identifying Signs, printed on 65-pound  
2 cover stock.

3           2.     At least 100 Designated Symbols, which shall be  
4 provided on adhesive peel-off sheets.

5           3.     A letter explaining the warning program, providing  
6 posting instructions, and providing instructions for warnings for  
7 products not displayed. This letter shall contain the text shown  
8 in Exhibit D, and shall contain no further information or  
9 statements without advance written approval of the Attorney  
10 General.

11          4.     A document identifying all Covered Tableware, by  
12 pattern, determined pursuant to the testing program established  
13 under Section 4, as follows:

14           a.     Said document need not accompany any shipment of  
15 the Covered Tableware, and may be sent as a single document on  
16 behalf of a group of Defendants, or individually only to those  
17 distributors or retail stores selling the Covered Tableware of an  
18 individual Defendant.

19           b.     Documents updating or supplementing the list of  
20 Covered Tableware shall be provided to the central purchasing  
21 office for all distributors or retailers as frequently as  
22 necessary to advise retailers of any additional Covered Tableware  
23 or of any tableware pattern no longer requiring warnings. Where  
24 tableware that had required a warning is determined to no longer  
25 require a warning, Defendants shall not send any notice advising  
26 the central purchasing office for all distributors or retail  
27 stores that the tableware no longer requires a warning until 180

1 days after the last articles in that pattern that required a  
2 warning were shipped from the factory for potential sale in  
3 California. Where there is no change in the list of Covered  
4 Tableware, Defendants shall advise the central purchasing office  
5 for all distributors and retail stores with whom they transact  
6 business for sale of Covered Tableware in California at least  
7 once each calendar year that the list remains accurate. Once a  
8 Defendant has advised a retailer or distributor that no warnings  
9 are necessary on any of its tableware Patterns, then no further  
10 notices need be sent to such retailer or distributor unless  
11 warnings are subsequently required on any of Defendant's  
12 Patterns.

13 5. Beginning with the first regularly scheduled printing  
14 of the brochure, catalog or price list referred to in Paragraph  
15 2.1.C after April 30, 1993, and continuing with each regularly  
16 scheduled brochure, catalog or price list, Defendants shall  
17 provide warnings as specified in either (a) the brochure or  
18 catalog or (b) the price list. Such brochure, catalog or price  
19 list shall, however, be distributed no later than September 30,  
20 1993. Any supplement to the price list which includes a pattern  
21 requiring a warning shall provide the Designated Symbol adjacent  
22 to the name of the pattern as provided in Paragraph 2.1.C.2.

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1           B.   Warning Materials for Mail Order Houses.

2           Each defendant shall mail to the central purchasing office  
3 for each company which they know or have reason to know sells  
4 that Defendant's Covered Tableware to residents of California by  
5 mail:

6           1.   A letter explaining the warning program. This letter  
7 shall contain the text shown in Exhibit E, and shall contain no  
8 further information or statements without advance written  
9 approval of the Attorney General.

10          2.   The same materials as those provided under  
11 Paragraph 2.2.A.4.

12           C.   Warning Materials for Restaurants.

13          Defendants shall mail to the central purchasing office for  
14 each restaurant and other food service establishment with whom  
15 they transact business for commercial use of Covered Tableware in  
16 California:

17          1.   Two copies of the warning sign set forth in Exhibit C.

18          2.   Letter(s) explaining the warning program and providing  
19 posting instructions to the restaurant, and where necessary, the  
20 restaurant supplier. This letter shall contain the text shown in  
21 Exhibit F, and shall contain no further information or statements  
22 without advance written approval of the Attorney General.

23          3.   A letter listing those pattern(s) of Covered Tableware  
24 sold to the individual restaurant or other food service  
25 establishment.

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1 D. Documents to Attorney General.

2 1. An example of documents mailed no later than April 30  
3 1993, plus a certificate stating that such materials have been  
4 properly mailed, shall be mailed to the Attorney General and EDF  
5 within 21 days after mailing by Defendants.

6 2. An example of documents mailed after April 30, 1993  
7 shall be maintained by Defendants for two years after mailing,  
8 and shall be made available to the Attorney General upon request

9 3. Where the Attorney General obtains documents pursuant  
10 to this section, he shall make them available to EDF upon  
11 request.

12 2.3. Any Defendant that has complied with the terms of  
13 Paragraph 2.2 of this Consent Judgment shall not be found to hav  
14 violated this Consent Judgment where a restaurant, retail store,  
15 distributor, or any other person required to provide warnings,  
16 fails to provide the warning required by Paragraph 2.1.

17 2.4. The fact that this Consent Judgment authorizes use of  
18 the term "Prop 65" in conjunction with the word "WARNING" in  
19 signs and notices prescribed in this Consent Judgment shall not  
20 be construed as an assertion or concession by any party that use  
21 of such term is either required under Proposition 65 or would  
22 meet Proposition 65's definition of "clear and reasonable  
23 warning" in any other context.

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1           3.   Injunctive Relief: Warning Standards

2           3.1. Warnings shall be provided based on the result of the  
3 method of analysis for lead set forth in "Official Methods of  
4 Analysis of the Association of Official Analytical Chemists,"  
5 15th Edition (1990), Method 973.32, "Cadmium and Lead in  
6 Earthenware: Atomic Absorption Spectrophotometric Method, Final  
7 Action (1977), AOAC/ASTM Method" ("Lead Leaching Test").  
8 Warnings shall be provided for all articles in any pattern for  
9 which the results of the Lead Leaching Test exceeds either of the  
10 levels set forth in A and B below. A "Pattern" consists of any  
11 group of Food Contact tableware articles, typically sold and  
12 marketed under one name, which is composed of pieces of the same  
13 general design and appearance, such that they are intended to be  
14 purchased and used together, in place settings or in table  
15 settings. Food Contact tableware articles are all tableware  
16 articles except any of the following: (1) those that are either  
17 permanently marked "Not for Food Use--article may poison food--  
18 for decorative purposes only" (or such other language as may be  
19 required by FDA compliance guidelines or regulations); (2) those  
20 for which reasonably foreseeable uses would not include the  
21 serving or storing of food or beverages (e.g., candlesticks or  
22 napkin rings); (3) salt shakers and pepper shakers or mills. For  
23 purposes of the Consent Judgment, flatware and hollowware are as  
24 defined in U.S. Food and Drug Administration Compliance Policy  
25 Guide 7117.07.

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1           A.     Flatware Warning Standard. Any Pattern for which the  
2 Lead Leaching Test result for the "worst case" article of  
3 flatware as defined in Paragraph 4.3.A. shipped for sale in  
4 California, exceeds 0.226 parts per million, as determined  
5 pursuant to Section 4 of this Consent Judgment.

6           B.     Hollowware Warning Standard. Any Pattern for which  
7 the Lead Leaching Test result for the "worst case" article of  
8 hollowware as defined in Paragraph 4.3.A. shipped for sale in  
9 California, exceeds 0.100 parts per million, as determined  
10 pursuant to Section 4 of this Consent Judgment.

11          C.     No Additional Warnings. Warnings shall not be  
12 provided for articles of tableware due to lead exposure to  
13 consumers unless required or specifically authorized by this  
14 Consent Judgment.

15          D.     Detectable Amount. For purposes of this Consent  
16 Judgment, the "Detectable Amount" of lead determined pursuant to  
17 Title 22 California Code of Regulations section 12901 is 0.100  
18 parts per million, using the Lead Leaching Test.

19           3.2. Changes to Certain Standards.

20          A.     For purposes of this Consent Judgment, the warning  
21 standards, the Lead Leaching Test, and the Detectable Amount set  
22 forth in Paragraph 3.1 shall not be changed for a period of at  
23 least five years from entry of this Consent Judgment, unless a  
24 different standard or test method is mandated by changes in  
25 Proposition 65 or its implementing regulations.

26          B.     After five years from entry of this Consent Judgment,  
27 the application of the existing statute and implementing

1 regulations to the testing and use of tableware results in a  
2 change in the warning standards, the Lead Leaching Test or the  
3 Detectable Amount, then the warning standards, the Lead Leaching  
4 Test, or the Detectable Amount for purposes of this Consent  
5 Judgment may be changed, even if not mandated by changes in  
6 Proposition 65 or its implementing regulations. Where the People  
7 believe such a change has occurred, they shall notify Defendants  
8 and provide a 90-day period during which Defendants may comment  
9 on the proposed change. If, after expiration of the comment  
10 period and consideration of any comments received, the People  
11 still believe that a change has occurred, they shall notify  
12 Defendants of the change. The change shall take effect 120 days  
13 after the notice of the change is mailed, and shall not apply to  
14 any tableware manufactured before the date the change takes  
15 effect.

16 C. Any change in the warning standard, the Lead Leaching  
17 Test, or the Detectable Amount mandated by changes in  
18 Proposition 65 or its implementing regulations shall take effect  
19 as provided by law.

20 4. Injunctive Relief; Testing Program

21 4.1. Defendants shall engage in the following program of  
22 testing of tableware ("Testing Program"), to determine whether  
23 warnings are required. Where a Defendant has complied with all  
24 provisions of the Testing Program, and the test results establish  
25 that under Paragraph 3.1 the Patterns do not require a warning,  
26 then no warning shall be given for those Patterns,  
27 notwithstanding any contrary test result obtained by any person

1 on any article of any of that Defendant's tableware, regardless  
2 of the date of manufacture.

3 4.2. As part of the Testing Program, each Defendant shall  
4 maintain the following records, or require by contract that any  
5 laboratory conducting testing shall maintain the following  
6 records and will provide them to Defendants upon request:

7 A. Records kept in the normal course of business showing  
8 the maintenance and calibration of equipment used to conduct the  
9 Testing Program;

10 B. Individual test results of all tests conducted as par  
11 of the Testing Program;

12 Provided that Defendants shall not be required to maintain the  
13 above records for any test for more than two years after that  
14 test was conducted.

15 4.3. The Testing Program shall consist of conducting the  
16 Lead Leaching Test defined in Paragraph 3.1, using equipment and  
17 methods which establish a detection limit of 0.100 parts per  
18 million or lower for each article tested. At least annually  
19 beginning January 1, 1993, unless otherwise provided, each  
20 Defendant shall test each of its Patterns currently being  
21 manufactured which may be sold in California in accordance with  
22 the following procedures:

23 A. Defendants shall test, at a minimum, the "worst case"  
24 article of flatware and "worst case" article of hollowware in  
25 each Pattern. The "worst case" article in any Pattern is the  
26 article that is shipped for sale in California at the time of  
27 testing that generates the highest lead concentration result or

1 the Lead Leaching Test. Where a change in an article lowers the  
2 result of the Lead Leaching Test such that it no longer is the  
3 highest result among all articles in the Pattern, then it is no  
4 longer the worst case article, and the new "worst case" article  
5 must be used for testing. If the Attorney General believes that  
6 a Defendant has incorrectly selected the "worst case" article in  
7 any pattern, as evidenced by a Lead Leaching Test result on any  
8 article that exceeds the Defendant's Lead Leaching Test result  
9 for the "worst case" article it has selected, then that Defendant  
10 shall submit the basis for its determination of the "worst case"  
11 article, including any test results, and shall test the article  
12 for which the Attorney General has obtained a higher test result.  
13 Testing of every stock keeping unit ("SKU") shall be an approved  
14 method of identifying the "worst case" article.

15 B. If, prior to executing the Consent Judgment, a  
16 Defendant has conducted tests on articles of flatware and  
17 hollowware other than the "worst case" article and the mean of  
18 the Lead Leaching Test Results of these articles exceeds the  
19 warning level, then the results of these tests may be used to  
20 determine whether a warning is required, provided that all of the  
21 other requirements of Paragraph 4.3 have been satisfied.

22 C. Undecorated Patterns, underglaze decorated Patterns and  
23 items with undecorated food surfaces may be grouped into one  
24 Pattern for purposes of the "worst case" test if they use the  
25 same glaze and are subject to the same kiln firing process.  
26 Prior to grouping any patterns together under this paragraph, a  
27 manufacturer shall perform a one-time test satisfying the

1 provisions of Paragraph 4.3 for each such Pattern to establish  
2 that the grouping is proper.

3 D. All test articles shall be randomly selected using a  
4 generally accepted random sampling method such as International  
5 Standards Organization 2859-1 (1989), or any random method  
6 described in Quality Control Handbook, J.M. Juran, Ed. (3d  
7 Edition, 1962), Chapter 24.

8 E. The number of articles tested shall be sufficient to  
9 establish that, after accounting for the deviation among the  
10 results of the sampled articles, there is a 95% statistical  
11 confidence that the mean Lead Leaching Test result of the actual  
12 population from which the sample is drawn is no greater than the  
13 level for which a warning is required. This number is shown on  
14 Exhibit G (for flatware) and on Exhibit H (for hollowware).  
15 Notwithstanding the foregoing, where less than 2,000 articles per  
16 year of the Pattern are shipped for potential sale in California  
17 six articles may be tested.

18 F. Alternatively, where at least 12 articles in a Pattern  
19 are tested, and the mean of the Lead Leaching Test result of the  
20 12 articles exceeds the warning level, no further testing is  
21 required if a warning is given.

22 G. Where at least 12 articles are tested, and the mean of  
23 the Lead Leaching Test result of the sampled articles is less  
24 than the level requiring a warning, but establishment of the 95%  
25 confidence level would require the testing of more than 108  
26 articles (based on Exhibits G and H), no further testing is  
27 required if a warning is given.

1       H.    If a Pattern is manufactured using glazes and  
2   decorating materials to which no lead has been intentionally  
3   added, no further testing and warnings shall be required for that  
4   Pattern, except that the manufacturer shall perform a one-time  
5   test satisfying the provisions of Paragraph 4.3 to confirm that  
6   no warning is required. Patterns may be grouped together and  
7   considered as one Pattern for purposes of this provision as  
8   provided in Paragraph 4.3.C.

9       I.    The lot, batch, or other group from which any articles  
10   to be tested are drawn must be representative of the entire  
11   population of articles of the Pattern in question manufactured in  
12   the calendar year or since the date of the last test. In order  
13   to accomplish this, a manufacturer must insure that its  
14   manufacturing process for a particular Pattern in the Testing  
15   Program did not change during the calendar year or since the last  
16   test. A manufacturing process change will be deemed to have  
17   occurred if there is a material change in: the glaze, print,  
18   decorating materials (or in the supplier of those materials),  
19   type of fuel used to fire the kiln, manufacturing site or kiln  
20   firing schedules, temperatures, cycles, settings and procedures,  
21   or any other factor that substantially affects Lead Leaching Test  
22   results on manufactured articles. If there is such a change, the  
23   manufacturer shall retest the product in accordance with the  
24   Testing Program to determine whether warnings are required.

25       4.4.   Any records required to be maintained by Paragraph  
26   4.2 shall be made available to the Attorney General for  
27   inspection within the State of California upon 60 days written

1 notice in accordance with Section 17. Such records shall not be  
2 made available to the public unless required by the California  
3 Public Records Act or other laws, except as part of presenting  
4 such records to a court as part of any proceeding, and except  
5 that the Attorney General shall make such records available to  
6 EDF on request, which shall maintain their confidentiality to the  
7 same extent as would be required if the records remained solely  
8 in the possession of the Attorney General. If a request for such  
9 records under the California Public Records Act or other law is  
10 made, the Attorney General shall respond to the request in the  
11 manner he determines is required by law. The Attorney General  
12 shall immediately notify Defendants of the receipt of any such  
13 request, and shall provide written notice 10 days prior to  
14 releasing any records pursuant to such a request.

15       5.   Penalties

16       5.1. On January 15, 1993, or 21 days after entry of this  
17 Consent Judgment, whichever is later, Defendants or an entity  
18 acting on their behalf shall pay a civil penalty pursuant to  
19 Health and Safety Code section 25249.7(b) of \$500,000. Payment  
20 shall be made by delivery of certified funds payable to the  
21 Attorney General of the State of California to 2101 Webster  
22 Street, 12th Floor, Oakland, California, 94612-3049 (Attn: Edward  
23 G. Weil, Deputy Attorney General).

24       6.   Litigation Costs

25       6.1. On January 15, 1993, or 21 days after entry of this  
26 Consent Judgment, whichever is later, Defendants or an entity  
27 acting on their behalf shall pay \$25,000 to the Attorney General.

1 as reimbursement for the costs of investigating and prosecuting  
2 this action. Payment shall be made by delivery of certified  
3 funds payable to the Attorney General of the State of California  
4 to 2101 Webster Street, 12th Floor, Oakland, California, 94612-  
5 3049 (Attn: Edward G. Weil, Deputy Attorney General).

6       7.   Tableware Education and Enforcement Fund

7       7.1. On January 15, 1993, or 21 days after entry of this  
8 Consent Judgment, whichever is later, Defendants, or an entity  
9 acting on their behalf, shall pay \$900,000 to the California  
10 Public Health Foundation, a tax-exempt charitable organization  
11 under section 501(c)(3) of the Internal Revenue Code, to be used  
12 by agreement with the Attorney General for the purposes set forth  
13 in this Consent Judgment. Payment shall be made by delivery of  
14 certified funds payable to the California Public Health  
15 Foundation to 2001 Addison Street, Suite 210, Berkeley,  
16 California, (Attn: James Simpson, General Counsel).

17       7.2. Of the funds paid by Defendants pursuant to paragraph  
18 7.1, \$500,000 shall be deemed refundable, and shall be maintained  
19 by the California Public Health Foundation in an account separate  
20 from the other funds, in order to assure that it is available to  
21 pay any refunds required by this paragraph. In any instance in  
22 which either the Attorney General or EDF obtains any recovery of  
23 money from any other person or entity, pursuant to a settlement  
24 of alleged violation of Proposition 65 or the Unfair Competition  
25 Act based on failure to provide clear, reasonable and lawful  
26 warning of exposure to lead from ceramic tableware, Defendants  
27 shall thereafter receive a refund of 25% of the amount of the



1 recovery from said other person or entity, up to a maximum refun  
2 of \$500,000. This 25% shall be calculated based on the total  
3 monies recovered from such person or entity, whether denominated  
4 as penalties, costs, attorney's fees, or contributions to this o  
5 any other fund. The Attorney General shall notify Defendants of  
6 any such settlements, by certified mail to the Coalition for Saf  
7 Ceramicware, at least every 60 days. Partial payments of any  
8 monies owed Defendants under this paragraph shall be made by the  
9 California Public Health Foundation 90 days after entry of this  
10 Consent Judgment, 180 days after entry of this Consent Judgment,  
11 and thereafter semi-annually or until the balance of the \$500,00  
12 is paid. Such payments shall be made by delivery of certified  
13 funds payable to the Coalition for Safe Ceramicware, c/o Collier  
14 Shannon, Rill & Scott, 3050 K Street, N.W., Washington, D.C.,  
15 20007 (Attention: David A. Hartquist), which shall have the  
16 responsibility of delivering such funds to the individual  
17 Defendants.

18 7.3. The Tableware Education and Enforcement Fund shall be  
19 used for the following general purposes, subject to Paragraph  
20 7.4:

21 A. Distribution of Informational Pamphlets to the Public.  
22 A general informational pamphlet may be prepared and distributed  
23 that describes the problem, what to look for, and gives directio  
24 to consumers about how to minimize exposure to lead.

25 B. Distribution of more specialized information for  
26 particular groups. Some groups need special information suited  
27 to their circumstances, and materials may be prepared for them

1 and distributed in a manner calculated to reach them. Some  
2 examples are ethnic groups, restaurants, schools and hospitals,  
3 tourists (U.S. citizens traveling abroad), health professionals  
4 (detailed information relevant to diagnosis and treatment of  
5 lead-related illnesses); ceramic hobbyists (information about the  
6 availability of lead-free glazes and proper firing techniques).

7 C. Television/video. Materials covering topics similar to  
8 those addressed in the publications.

9 D. Newspaper/media ads and public service announcements.  
10 Advertisements and/or public service announcements describing the  
11 problem more briefly, and advising how to obtain the available  
12 publications, or explaining the designated symbol warning system  
13 could be run in newspapers and on radio.

14 E. Toll-free information services. A central toll-free  
15 telephone number could be contained in the brochures and given in  
16 ads. Additional information about lead problems and referrals to  
17 testing labs or other lead reduction programs may be provided.

18 F. Workshops and training. Workshops may be provided for  
19 ceramic hobbyists, discussing use of unleaded glazes and proper  
20 firing practices with leaded glazes.

21 G. Spanish and Asian language materials. Development and  
22 dissemination of Spanish, Chinese and Vietnamese language  
23 versions of these materials.

24 H. Lead testing of tableware: Funds may be used to test  
25 tableware in households with cases of acute lead poisoning that  
26 are being investigated by the public agencies such as Department  
27 of Health Services' Childhood Lead Poisoning Prevention Program,

1 and for tableware use in schools or other institutions.

2 I. Education on other sources of lead exposure: Education  
3 about other sources of lead exposure for the limited purpose of  
4 helping to assure that any informational materials do not create  
5 the misleading impression that tableware is responsible for the  
6 bulk of human lead exposure.

7 J. Further enforcement: Some portion of the funding will  
8 be directed toward the Attorney General's costs of investigating  
9 and prosecuting violations of Proposition 65 and the Unfair  
10 Competition Act by other tableware companies.

11 K. Compliance Inspections: A portion of the funding may b  
12 used to pay the cost of periodic inspections of stores throughou  
13 the state and other costs of assuring that Defendants comply wit  
14 all terms of the judgment.

15 7.4. Specific allocation of funds toward the purposes  
16 identified in Paragraph 7.3, as well as the selection of persons  
17 or organizations to carry out those purposes, and the approval o  
18 materials to be published or distributed in furtherance of those  
19 purposes, shall be determined by agreement between the Californi  
20 Public Health Foundation and the Attorney General. This process  
21 shall include consultation with experts in public health and ris  
22 communication issues, including EDF, and a designee of the  
23 Coalition for Safe Ceramicware, except that EDF and the Coalitic  
24 for Safe Ceramicware shall each pay their own expenses. The  
25 contract between the Attorney General and the California Public  
26 Health Foundation shall include a specific provision obligating  
27 the California Public Health Foundation to provide refunds as

1 provided under Paragraph 7.2, and the Coalition for Safe  
2 Ceramicware shall be included as an express third-party  
3 beneficiary of that provision of the contract.

4       8.   Injunctive Relief: Lead Reduction

5       8.1. Each Defendant shall reduce lead levels in its  
6 tableware as provided in Paragraph 8.2, 8.3 and 8.4, or in the  
7 alternative, shall pay civil penalties to the Attorney General  
8 pursuant to Proposition 65 as provided in Paragraph 8.4 and 8.5.  
9 No Defendant shall have any obligation to pay penalties under  
10 this paragraph for violations by any other Defendant.

11       8.2. Each Defendant shall calculate and submit to the  
12 Attorney General and EDF Baseline Lead Levels as follows, within  
13 60 days after entry of this judgment:

14       A.   A "Baseline Flatware Lead Level," shall be established  
15 as follows:

- 16       (1) taking the mean Lead Leaching Test result reported  
17           under cover of Defendants' letters of January 27 and  
18           February 18 and 21, 1992, for the flatware in each  
19           Pattern that exceeds the warning standard set forth in  
20           Paragraph 3.1.A;
- 21       (2) multiplying the mean Lead Leaching Test result for the  
22           flatware in each Pattern by the number of articles of  
23           that Pattern estimated to have been sold in the State  
24           of California in 1991;
- 25       (3) multiplying the product obtained in (2) by a "usage  
26           factor," which shall be 5 for occasional use tableware,  
27           150 for daily use tableware, and 500 for

1 restaurant/institutional use tableware; and  
2 (4) adding the results obtained for each Pattern under (3)  
3 and dividing by the number of articles of flatware sold  
4 of all Patterns used in the calculation.

5 B. The "Baseline Hollowware Lead Level" shall be  
6 established by using the same procedure used for the Baseline  
7 Flatware Lead Level, but using the mean Hollowware Lead Leaching  
8 Test result in each Pattern, and applying the warning standard  
9 for Hollowware set forth in Paragraph 3.1.B.

10 8.3. The "Current Flatware Lead Level" and "Current  
11 Hollowware Lead Level" shall be established in the same manner,  
12 and using the same Patterns, as the Baseline Flatware Lead Level  
13 and Baseline Hollowware Lead Level, except that:

14 A. any new Pattern that has been shipped for sale in  
15 California that was not for sale on the date of calculation of  
16 the Baseline Level shall be included in the calculation of the  
17 Current Level;

18 B. weighting by number of articles sold shall use sales  
19 estimates of tableware sold in California for the most recent  
20 calendar year; and

21 C. mean Lead Leaching Test results for each Pattern shall  
22 be obtained using test procedures in accordance with Section 4,  
23 except that where a cup was used to calculate the Baseline  
24 Hollowware Lead Level, a manufacturer may opt to use a cup as th  
25 representative sample of hollowware, and that where a salad plat  
26 was used to calculate the Baseline Flatware Lead Level, a  
27 manufacturer may opt to use a salad plate as the representative

1 article of flatware, for purposes of Section 8 only.

2 8.4. "Target Lead Levels" are achieved whenever the Current  
3 Lead Level, calculated on the basis of the most recent data  
4 collected pursuant to Paragraph 8.3, on or prior to the dates  
5 specified below, is lower than the Baseline Lead Level by the  
6 percentage specified as follows:

	Year 1 (2/28/94)	Year 3 (12/31/95)	Year 5 (12/31/97)
7 Flatware	15%	30%	50%
8 Hollowware	10%	15%	25%

9  
10 8.5. Where any Defendant does not achieve any Target Lead  
11 Level (either for Flatware or Hollowware, in any specified year),  
12 that Defendant shall pay the following civil penalty under  
13 Proposition 65:

14 A. For any company that sold over 100,000 articles of  
15 tableware in 1991 allegedly exceeding the warning standard,  
16 \$33,333 (Wedgwood USA, Inc.; Royal Doulton USA, Inc.; Noritake  
17 Company, Inc.; Villeroy & Boch, Ltd.; Mikasa);

18 B. For any company that sold over 50,000 but less than  
19 100,000 articles of tableware in 1991 allegedly exceeding the  
20 warning standard, \$16,666 (none of the Defendants signing this  
21 Consent Judgment fall within this category);

22 C. For any company that sold less than 50,000 articles of  
23 tableware in 1991 allegedly exceeding the warning standard,  
24 \$8,333 (Fitz & Floyd, Inc.; Pickard, Inc.; The Pfaltzgraff  
25 Company).

26 8.6. Each Defendant shall submit its calculation of Current  
27 Lead Levels to the Attorney General within 120 days after the 1,

1 3 and 5 year Target dates, as follows:

2 A. The submission shall include the calculations  
3 themselves, the mean Lead Leaching Test results on which they are  
4 based, a description of how the sales estimates are derived, and  
5 shall be made under penalty of perjury.

6 B. Within 60 days of receipt of a complete submission  
7 containing all information to determine whether the Target Lead  
8 Levels have been achieved, the Attorney General shall determine  
9 whether the Defendant has achieved the Target Lead Levels and  
10 shall mail notice of his determination to the Defendant, except  
11 as provided in C, below.

12 C. Where the Attorney General determines that a submission  
13 is not complete or does not contain all information necessary to  
14 determine whether the Target Lead Levels have been achieved, he  
15 may direct the Defendant to provide further information within a  
16 specified period of no less than 30 days. Where the Attorney  
17 General requests such information, the 60-day period under B,  
18 above, shall not commence until the Attorney General has received  
19 the requested information. Failure to provide the requested  
20 information shall constitute a failure to achieve the Lead  
21 Reduction Targets.

22 D. If the Attorney General determines that the Defendant  
23 has failed to achieve any Target Lead Levels, he shall so notify  
24 the Defendant. Within 60 days after said notice is sent, any  
25 such Defendant must either deliver to the Attorney General the  
26 entire amount of penalty required by Paragraph 8.5 for failure to  
27 achieve the Target Lead Level in question, or properly file a

1 notice of motion with the Superior Court seeking a determination  
2 that the Target Lead Level has been achieved.

3 F. Documents collected by the Attorney General under this  
4 section shall be treated in the same manner as documents  
5 collected under Paragraph 4.4 for purposes of disclosure to EDF  
6 and to the public.

7 G. The Attorney General shall notify the EDF of all  
8 determinations under Paragraph 8.6.B., C. and D. Where the  
9 Attorney General has determined that a Defendant achieved its  
10 Target Lead Levels, but EDF disagrees, EDF may properly file and  
11 notice a motion before the Superior Court seeking a determination  
12 that the Target Lead Level has not been achieved, within 60 days  
13 after the Defendant's complete submission is made available to  
14 EDF by the Attorney General.

15 9. Actions by Environmental Defense Fund

16 9.1. Immediately after entry of this Consent Judgment, EDF  
17 shall file with the court a Request for Dismissal, with  
18 prejudice, of Environmental Defense Fund and Lloyd G. Connelly v.  
19 Josiah Wedgwood & Sons, Inc., No. 938428, each party to bear its  
20 own costs.

21 9.2. Thirty days after EDF gives notice that the action has  
22 been dismissed with prejudice, together with a file stamped,  
23 conformed copy of the dismissal document, or on January 15, 1993,  
24 whichever is later, Defendants or an entity acting on their  
25 behalf shall pay to EDF the sum of \$575,000 payable to Rogers,  
26 Joseph, O'Donnell & Quinn as Trustee for the Environmental  
27 Defense Fund, Inc., and delivered to Joseph Sandoval, Jr.,



1 Rogers, Joseph, O'Donnell & Quinn, 311 California Street, Tenth  
2 Floor, San Francisco, CA, 94104, as compensation for attorney's  
3 fees and costs incurred in the prosecution and investigation of  
4 this matter and for further enforcement of Proposition 65 by EDF  
5 for further educational materials by EDF, and to contribute to an  
6 existing Proposition 65 enforcement fund administered by the  
7 Tides Foundation.

8       10. Modification of Consent Judgment

9       10.1. This Consent Judgment may be modified upon written  
10 approval of the parties and upon entry of a modified Consent  
11 Judgment by the Court thereon, or upon motion of any party as  
12 provided by law and upon entry of a modified Consent Judgment by  
13 the Court.

14       11. Additional Enforcement Actions; Continuing Obligations

15       11.1. By entering into this Consent Judgment, the People  
16 and EDF do not waive any right to take further enforcement  
17 actions on any violations not covered by the Consent Judgment, as  
18 specifically set forth in Section 15, and the Complaint. Except  
19 as specifically provided herein, nothing in this Consent Judgment  
20 shall be construed as diminishing each Defendant's continuing  
21 obligation to comply with Proposition 65 or the Unfair  
22 Competition Act in its future activities.

23       12. Enforcement of Consent Judgment

24       12.1. The People may, by motion or order to show cause  
25 before the Superior Court of San Francisco, enforce the terms and  
26 conditions contained in the Consent Judgment. In any action  
27 brought by People to enforce the Consent Judgment, People may

1 seek whatever fines, costs, penalties or remedies are provided by  
2 law for failure to comply with the Consent Judgment; and where  
3 said violations of this Consent Judgment constitute subsequent  
4 violations of Proposition 65 or other laws independent of the  
5 Consent Judgment and/or those alleged in the Complaint, People  
6 and EDF are not limited to enforcement of the Consent Judgment,  
7 but may seek in another action whatever fines, costs, penalties  
8 or remedies are provided for by law for failure to comply with  
9 Proposition 65 or other laws.

10 12.2. Notwithstanding the provisions of Paragraph 12.1, the  
11 People may seek fines, costs and penalties for the violations  
12 identified in subparagraph G below through the following  
13 alternative procedure:

14 A. The proceeding shall be brought by noticed motion with  
15 at least 21 days notice in accordance with the Rules of the  
16 Superior Court;

17 B. No oral testimony or discovery shall be permitted;

18 C. Documents submitted by the People and Defendants shall  
19 set forth admissible evidence;

20 D. Any violation shall be proven by a preponderance of the  
21 evidence;

22 E. Service of papers on the person identified in Paragraph  
23 17.2 shall be sufficient service on the party against whom relief  
24 is sought;

25 F. Any records, data, test results, or other documents  
26 obtained from Defendants may be relied upon by the People and  
27 considered by the Court to resolve a claimed violation without

1 further evidentiary foundation;

2 G. Where the Court finds a violation it shall order the  
3 Defendant to pay a liquidated penalty as follows:

4 (1) Where Covered Tableware is sold by a retailer without  
5 the warnings required in Paragraph 2.1 and the Defendant has  
6 failed to provide warning materials to the retailer for such  
7 Covered Product(s) as required by Paragraph 2.2, \$100 per  
8 retailer per day;

9 (2) Where records sufficient to establish that a Pattern  
10 was properly tested under Paragraph 4.3 which were required to be  
11 retained under Paragraph 4.2 are not available, \$250 for each  
12 Pattern, provided, however, no such penalty shall be assessed for  
13 such a Pattern if a penalty for that Pattern has been assessed  
14 under Paragraph 12.2.G.3 below;

15 (3) Where an article of tableware was required to be tested  
16 as a representative sample for a Pattern, and either was not  
17 tested or was not tested in accordance with Paragraph 4.3, \$500  
18 for each Pattern not tested;

19 Provided, however, that the total penalty assessed against  
20 any Defendant under this procedure shall not exceed \$12,500 in  
21 any one calendar year.

22 12.3. EDF may enforce the terms of this Consent Judgment  
23 through the methods provided in 12.1 and 12.2 if it first gives  
24 the Attorney General a written notice specifying any violation  
25 that it alleges has occurred, with a copy to the Defendant, and  
26 the Attorney General has not commenced or is not diligently  
27 prosecuting a proceeding under either 12.1 or 12.2 within 60 days.

1 after said notice was received by the Attorney General. If the  
2 Attorney General commences and diligently prosecutes a proceeding  
3 within 60 days from receipt of the notice, EDF shall have no  
4 right or ability to prosecute or intervene in that proceeding, or  
5 to commence a similar proceeding. This paragraph constitutes the  
6 exclusive basis by which EDF may enforce Parts 2, 3, and 4 of  
7 this Consent Judgment.

8 12.4. No Defendant shall have any obligation to pay  
9 Penalties under this Section for violations by any other  
10 Defendant.

11 13. Application of Consent Judgment

12 13.1. The Consent Judgment shall apply to and be binding  
13 upon the parties, their divisions, subdivisions, and  
14 subsidiaries, and the successors or assigns of any of them.

15 14. Authority to Stipulate to Consent Judgment

16 14.1. Each signatory to this Consent Judgment certifies  
17 that he or she is fully authorized by the party he or she  
18 represents to stipulate to this Consent Judgment and to enter  
19 into and execute the Consent Judgment on behalf of the party  
20 represented and legally to bind that party.

21 15. Claims Covered

22 15.1. This Consent Judgment is a final and binding  
23 resolution between the People, EDF and each defendant of any  
24 alleged violation of Proposition 65 and of Business and  
25 Professions Code Sections 17200 et seq., and any common law  
26 claim, arising from failure to provide clear, reasonable, and  
27 lawful warnings of exposure to lead that passes into food or

1 beverages served or stored in any Food Contact tableware article  
2 manufactured, distributed or sold by any Defendant, whether  
3 committed by a Defendant or by any entity within its chain of  
4 distribution, including, but not limited to, retail sellers of  
5 that tableware. As between the People, EDF, and each Defendant,  
6 compliance with paragraphs 2.2, 3 and 4 herein resolves any  
7 issue, now and in the future, concerning compliance by each  
8 Defendant with the requirements of Proposition 65 and the Unfair  
9 Competition Act with respect to its tableware.

10       16. Retention of Jurisdiction

11       16.1. This Court shall retain jurisdiction of this matter  
12 to implement the Consent Judgment.

13       17. Provision of Notice

14       17.1. When any party is entitled to receive any notice  
15 under this Consent Judgment, the notice shall be sent to the  
16 person and address set forth in this paragraph. Any party may  
17 modify the person and address to whom notice is to be sent by  
18 sending each other party notice by certified mail, return receipt  
19 requested. Said change shall take effect for any notice mailed  
20 at least five days after the date the return receipt is signed by  
21 the party receiving the change.

22       17.2. Notices shall be sent to the following:

23 For the Attorney General:

24       Edward G. Weil  
25       Deputy Attorney General  
26       2101 Webster Street, 12th Floor  
27       Oakland, CA 94612

27       ///

1 For Wedgwood USA, Inc. and Pickard, Inc.:

2 David A. Hartquist  
3 Mark L. Austrian  
4 Collier, Shannon, Rill & Scott  
5 3050 K Street, N.W.  
6 Suite 400  
7 Washington, D.C. 20007

8 For Fitz and Floyd, Inc.:

9 Bobby Aldridge  
10 Fitz and Floyd, Inc.  
11 2055-C Luna Road  
12 Carrollton, TX 75006

13 For Royal Doulton USA Inc.:

14 President and C.E.O.  
15 Royal Doulton USA Inc.  
16 700 Cottontail Lane  
17 Somerset, NJ 08873

18 For Villeroy & Boch Tableware, Ltd.:

19 Richard Mattiaccio  
20 Francesca Scorsone  
21 Pavia & Harcourt  
22 600 Madison Avenue  
23 New York, NY 10022

24 For Mikasa and American Commercial Inc.:

25 Shigeru Watanabe  
26 Susan Peck  
27 Kelley, Drye, & Warren  
515 South Flower Street, Suite 1100  
Los Angeles, CA 90071

For Pfaltzgraff Company:

23 Craig W. Brenner, Esq.  
24 General Counsel  
25 The Pfaltzgraff Company  
26 140 East Market St.  
27 York, Pennsylvania 17401

26 ///

27 ///

1 For Noritake Company, Inc.:

2 Michelle Tanaka  
3 Tanaka & O'Leary  
4 655 15th Street, N.W.  
Suite 800  
Washington, DC 20005

5 For Environmental Defense Fund:

6 David Roe  
7 Environmental Defense Fund  
8 5655 College Avenue  
Oakland, CA 94618

9 18. Court Approval

10 18.1. If this Consent Judgment is not approved by the  
11 court, it shall be of no force or effect.

12 19. Execution in Counterparts

13 19.1. The stipulations to this Consent Judgment may be  
14 executed in counterparts, which taken together shall be deemed to  
15 constitute one document.

16 IT IS SO STIPULATED:

17 Dated: July 12, 1997 DANIEL E. LUNGREN, Attorney  
18 General of the State of  
California  
19 RODERICK E. WALSTON  
Chief Assistant Attorney General  
20 THEODORA BERGER  
Assistant Attorney General  
21 CRAIG C. THOMPSON  
EDWARD G. WEIL  
22 CLIFFORD RECHTSCHAFFEN  
Deputy Attorneys General

23 By: [Signature]  
24 EDWARD G. WEIL  
25 Deputy Attorney General  
Attorneys for People

26 [SIGNATURES CONTINUED ON SUBSEQUENT PAGES]  
27

1 Dated: \_\_\_\_\_, 1992

2 DAVID A. HARTQUIST  
3 MARK L. AUSTRIAN  
4 COLLIER, SHANNON, RILL & SCOTT  
5 3050 K Street, N.W.  
6 Suite 400  
7 Washington, DC 20007

8 CHARLOTTE URAM  
9 RAYMOND F. LYNCH  
10 LANDELS RIPLEY & DIAMOND  
11 350 Steuart Street  
12 San Francisco, CA 94105-1250

13 By: \_\_\_\_\_

14 Attorneys for  
15 Wedgwood USA, Inc.  
16 Fitz and Floyd, Inc.  
17 Pickard, Inc.  
18 Royal Doulton USA Inc.

19 Dated: 12/22, 1992

20 RICHARD MATTIACCIO  
21 FRANCESCA SCORSONE  
22 PAVIA & HARCOURT  
23 600 Madison Avenue  
24 New York, NY 10022

25 BARRY P. GOODE  
26 MCCUTCHEON, DOYLE, BROWN & ENERSON  
27 3 Embarcadero Center  
San Francisco, CA 94111

By: Richard J. Mattiaccio

Attorneys for Villeroy & Boch  
Tableware, Ltd.

Dated: \_\_\_\_\_, 1992

KELLEY, DRYE, & WARREN  
SHIGERU WATANABE  
SUSAN PECK  
515 South Flower Street  
Suite 1100  
Los Angeles, CA 90071

By: \_\_\_\_\_

Attorneys for Mikasa and  
American Commercial Inc.

[SIGNATURES CONTINUED ON SUBSEQUENT PAGES]



1 Dated: 12/30, 1992

2 DAVID A. HARTQUIST  
3 MARK L. AUSTRIAN  
4 COLLIER, SHANNON, RILL & SCOTT  
5 3050 K Street, N.W.  
6 Suite 400  
7 Washington, DC 20007

8 CHARLOTTE URAM  
9 RAYMOND F. LYNCH  
10 LANDELS RIPLEY & DIAMOND  
11 350 Steuart Street  
12 San Francisco, CA 94105-1250

13 By: Mark S. Chisholm

14 Attorneys for  
15 Wedgwood USA, Inc.  
16 Fitz and Floyd, Inc.  
17 Pickard, Inc.  
18 Royal Doulton USA Inc.

19 Dated: \_\_\_\_\_, 1992

20 RICHARD MATTIACCIO  
21 FRANCESCA SCORSONE  
22 PAVIA & HARCOURT  
23 600 Madison Avenue  
24 New York, NY 10022

25 BARRY P. GOODE  
26 McCUTCHEON, DOYLE, BROWN & ENERSON  
27 3 Embarcadero Center  
San Francisco, CA 94111

By: \_\_\_\_\_

Attorneys for Villeroy & Boch  
Tableware, Ltd.

21 Dated: 12/31, 1992

22 KELLEY, DRYE, & WARREN  
23 SHIGERU WATANABE  
24 SUSAN PECK  
25 515 South Flower Street  
26 Suite 1100  
27 Los Angeles, CA 90071

By: Shigeru Watanabe

SHIGERU WATANABE  
Attorneys for Mikasa and  
American Commercial Inc.

[SIGNATURES CONTINUED ON SUBSEQUENT PAGES]

1  
2 Dated: 12/15/92, 1992

PEPPER, HAMILTON & SCHEETZ  
ANDREA S. ORDIN  
444 South Flower Street  
19th Floor  
Los Angeles, CA 90071

3  
4  
5 By: Andrea S. Ordin

6 Attorneys for Pfaltzgraff  
7 Company

8 Dated: \_\_\_\_\_, 1992

TANAKA, & O'LEARY  
MICHELLE TANAKA  
655 15th Street, N.W.  
Suite 800  
Washington, DC 20005

9  
10  
11 By: \_\_\_\_\_

12 Attorneys for Noritake Company,  
13 Inc.

14 Dated: 1/15/93, ~~1992~~

ENVIRONMENTAL DEFENSE FUND

15  
16 By: David Roe

David Roe  
Attorneys for Environmental Defense  
Fund and Lloyd G. Connelly  
Plaintiffs in #938428

17  
18  
19  
20 IT IS SO ORDERED.  
21 1/15/93

EDWARD STERN  
PRESIDING JUDGE

22  
23 JUDGE OF THE SUPERIOR COURT  
24  
25  
26  
27

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Dated: \_\_\_\_\_, 1992

PEPPER, HAMILTON & SCHEETZ  
ANDREA S. ORDIN  
444 South Flower Street  
19th Floor  
Los Angeles, CA 90071

By: \_\_\_\_\_

Attorneys for Pfaltzgraff  
Company

Dated: December 22, 1992

TANAKA, & O'LEARY  
MICHELLE TANAKA  
655 15th Street, N.W.  
Suite 800  
Washington, DC 20005

By: 

Attorneys for Noritake Company,  
Inc.

Dated: \_\_\_\_\_, 1992

ENVIRONMENTAL DEFENSE FUND

By: \_\_\_\_\_

David Roe  
Attorneys for Environmental Defense  
Fund and Lloyd G. Connolly  
Plaintiffs in #938428

IT IS SO ORDERED.

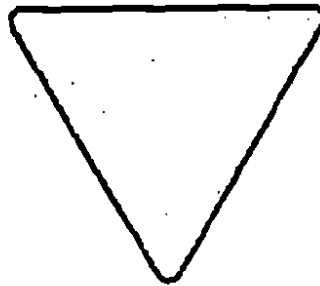
JUDGE OF THE SUPERIOR COURT

EXHIBIT A:  
IDENTIFYING SIGN.

# PROP 65 **WARNING**

Use of certain tableware for sale in this store will expose you to lead,  
a chemical known to the State of California to cause birth defects  
or other reproductive harm.

Patterns identified with this symbol:



displayed on or next to the product,  
are the ones for which this warning is given.



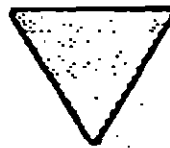


EXHIBIT B:  
DESIGNATED SYMBOL



EXHIBIT C:  
RESTAURANT SIGN

PROP 65  
**WARNING**

The particular pattern of dishes used here  
will expose you to lead, a chemical known to  
the State of California to cause birth defects  
or other reproductive harm.





EXHIBIT D--RETAILER INSTRUCTIONS

(On letterhead with name, return address and telephone of sender)

Re: Court-ordered Warnings for Ceramic Tableware

Dear Retailer:

This letter conveys important materials concerning the need to provide court-ordered warnings for certain ceramic tableware products that contain lead. It is very important that you read and follow the instructions enclosed with this letter.

In January, 1992, we notified you that the State of California had initiated legal action under California's "Proposition 65," alleging that the use of certain ceramic tableware products exposes consumers to lead, a chemical known to the State to cause birth defects or other reproductive harm. We disputed these claims and believe that our products are safe. Nonetheless, we noted that settlement discussions were underway and asked you, as an interim matter, to post in-store signs providing Proposition 65 warnings for designated brands of ceramic tableware, manufactured by members of the Coalition for Safe Ceramicware ("CSC" or "Coalition").

The State of California and the Environmental Defense Fund (a co-plaintiff), have now reached a settlement with the defendants, all of whom are members of the CSC. Under the settlement agreement, the manufacturers do not admit any violation of Proposition 65, but agree to continue to provide warnings under the statute. The agreement requires a warning program that uses a combination of in-store "identifying signs" and a "designated symbol" to identify the specific tableware patterns to which the Proposition 65 warning applies. (NOTE: This program is required instead of in-store signs that refer only to general brand names.)

Enclosed are four very important items:

1. A list of certain brands and patterns of ceramic tableware that contain lead, and for which a warning under Proposition 65 is to be provided.
2. Signs for posting in your store IF you currently sell any ceramic tableware for which a warning is required.
3. Adhesive stickers containing a warning symbol. These are to be posted on or near displayed items of tableware for which a warning is required.
4. A set of instructions for properly posting the warning materials.

If you do not post these signs and use these stickers as required, you risk further legal action by the Attorney General or others, in which monetary penalties could be sought.

Products for which warnings are required may be sold legally because they comply with U.S. FDA Standards for lead release. They require a warning because they exceed the stricter lead exposure standards of Proposition 65.

Not all suppliers are participating in this court-ordered warning program. Suppliers that are not participating in this program may be providing ceramic tableware that requires Proposition 65 warnings. You should contact your suppliers to determine if they are in compliance with Proposition 65, since failure to comply could subject you to the legal actions referred to above.

If you need additional signs or stickers, they are available FREE OF CHARGE by calling this toll-free number: 1-800-xxx-xxxx

Sincerely,  
Name and title

## Retail Store Warning Instructions for Ceramic Tableware

*Here's what you need to do to comply with the court-ordered warning program:*

1. Check the list, and see if any of the ceramic tableware sold in your store is listed as requiring a warning. If your tableware is on the list, or if your supplier of another brand of ceramic tableware informs you that its products require a warning, then you must post the enclosed signs. If your tableware is not on the list, and none of your suppliers inform you that its products require a warning, then you do not need to post the signs.

2. Post the signs. If any of the tableware sold in your store requires a warning, then you must post these signs. Where you must post them depends on the type of store you operate. There are three types:

- a. Department stores with a separate check-out for the tableware department. If you sell tableware in a physically separate section with its own cash registers primarily used for that department, you must post the signs at each cash register in the tableware department and at two other conspicuous places in the tableware department.
- b. Large stores without separate check-out for tableware. If you have more than 7,500 square feet of floor space, post a sign conspicuously at each place where ceramic tableware is displayed, plus any additional signs needed to assure that any potential purchaser of tableware is likely to see one of the signs.

- c. Small as with no separate check it for tableware.  
If you have less than 7,500 square feet of floor space,  
you may choose either (a) or (b). You do not need to  
do both.

3. *Use the warning symbol:*

The warning signs by themselves don't tell the consumer which products require a warning. Posting the enclosed warning symbol on or near the product is essential, since many other tableware products do not require a warning. For every pattern that you display, you need to put the sticker in any one (not all), of the following places:

1. On the back of one displayed article in each pattern, if the article has the price, or has the price or a list of articles available in that pattern on the back;  
or
2. On one item on display in each pattern that requires a warning, where it can be seen when the item is displayed; or
3. On a tent card, placard, tent sign, or other sign that has the name of the pattern and is adjacent to the displayed item.

These symbols must be posted as required. They are required by the court order to be posted no later than June 1, 1993. Using the signs by themselves, or giving a list of patterns that require a warning to customers who ask for it, does not comply with the court order.

Over time, different suppliers will provide new information about which products require a warning, and which do not. Some suppliers will remove lead from products so that they no longer require a warning. As you receive updated information from suppliers, you should delete the warning symbol or add any new stickers that are needed. You will not need to change your signs. This is intended to be less burdensome than requiring complete changes in all signs each time a single pattern changes.

*Remember, if none of the tableware sold in your store requires a warning, you do not need to post any of these materials.*

**EXHIBIT E: MAIL ORDER HOUSE INSTRUCTIONS**

(On letterhead with name, return address and telephone of sender)

**Re: Court-ordered Warnings for Ceramic Tableware**

**Dear Mail Order House:**

This letter conveys important materials concerning the need to provide court-ordered warnings for certain ceramic tableware products offered for sale to customers in California. It is very important that you read and follow the instructions enclosed with this letter.

Enclosed are two very important items:

1. A list of certain brands and patterns of tableware that contain lead, and for which a warning under Proposition 65 is to be provided.
2. Instructions for providing warnings in either your catalogs or brochures or a warning accompanying your products when they are shipped to California customers.

These materials are being provided by tableware manufacturers as part of a court-approved settlement of a legal action brought under "Proposition 65" by the California Attorney General. In this legal action, the Attorney General claims that certain brands and patterns of ceramic tableware contain lead, which passes into food and drink kept in those items. Lead is a chemical known to the State to cause birth defects or other reproductive harm, and the Attorney General claims that manufacturers and retailers of these products are legally required to provide consumers with a clear and reasonable warning of this exposure to lead. The companies sued by the Attorney General dispute these claims, and believe their products are safe, but have agreed to take various actions to settle the case.

If you do not provide these warnings as required, you risk further legal action by the Attorney General or others, in which monetary penalties could be sought.

The tableware contained on the list may be sold to California customers legally because it complies with U.S. FDA standards for lead release. They require a warning because they exceed the stricter lead exposure standards of California's Proposition 65.

Not all suppliers are participating in this court-ordered warning program. Suppliers that are not participating in this program may be providing ceramic tableware that requires Proposition 65 warnings. You should contact your suppliers to determine if they are in compliance with Proposition 65, since failure to comply could subject you to the legal actions referred to above.

Sincerely,

Name and title



## MAIL ORDER TABLEWARE WARNING INSTRUCTIONS

Here's what you need to do to comply with the court-ordered warning program:

1. Check the list, and see if any of the ceramic tableware you are offering for sale in California is listed as requiring a warning. If your tableware is on the list, or if your supplier of another brand of ceramic tableware informs you that its products require a warning, then you must provide warnings. If your tableware is not on the list, and none of your other suppliers inform you that its products require a warning, then you do not need to provide warnings.
2. Provide necessary warnings. If you need to provide warnings you may do so in one of two ways.
  - a. Mail Order Catalog or Brochure. The following warning message shall be stated within the mail order catalog or brochure, on the inside front cover, on the same page as any order form, or on the same page as the price, in at least 12 point type with the Designated Symbol at least 3/4 inch:

"Prop. 65 WARNING: Use of certain ceramic tableware for sale in this catalog or brochure will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. Patterns identified in this catalog or brochure with the following symbol are the ones for which this warning is given:  
[Designated Symbol]"

The Designated Symbol is a yellow triangle, a copy of which is attached. This symbol must be reproduced in the same color in your catalog or brochure. The Designated Symbol should also be provided for ceramic tableware for which a warning is required, wherever the pattern name and price appear together, in the same size as the name of the pattern, or

- b. Package Insert or Label. Alternatively, a warning may be provided with the ceramic tableware requiring a warning by (a) inserting a card or slip of paper measuring at least 4" by 6" in the shipping carton, or (b) affixing a pressure-sensitive label measuring at least standard business-card size on the shipping carton, or (c) printing the warning on the packing slip or customer invoice identifying that ceramic tableware requiring a warning in letters of the same size as the description of the product. The warning shall read as follows: "Prop 65 WARNING: Use of this product will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. You may return this product for a full refund within 30 days of receipt, if you wish. You may also obtain a list of each pattern of ceramic tableware sold by this company for which the same warning is given."

Upon request by the person receiving that warning, the mail order house shall provide a list of each pattern of ceramic tableware sold by you for which a warning is required.

**EXHIBIT F: INSTRUCTIONS TO RESTAURANT SUPPLIERS**

(On letterhead with name, return address and telephone of sender)

**Re: Court-ordered Warnings for Ceramic Tableware**

**Dear Restaurant Supplier:**

Important material for your restaurant customers concerning the need to provide court-ordered warnings for certain ceramic tableware products that contain lead is attached to this letter. These materials contain a list of certain brands and patterns of ceramic tableware that contain lead, and for which a Proposition 65 warning is to be provided. You are requested to send the enclosed materials to each restaurant that uses ceramic tableware on this list.

These materials are being provided by tableware manufacturers as part of a court-approved settlement of a legal action brought under Proposition 65 by the California Attorney General. In this legal action, the Attorney General claims that certain brands and patterns of ceramic tableware contain lead, which passes into food and drink kept in those items. Lead is a chemical known to the State to cause birth defects or other reproductive harm, and the Attorney General claims that manufacturers and retailers of these products are legally required to provide consumers with a clear and reasonable warning of this exposure to lead. The companies sued by the Attorney General dispute these claims, and believe their products are safe, but have agreed to take various actions to settle the case.

If you do not send these materials as requested, you risk further legal action by the Attorney General or others, in which monetary penalties could be sought.

The tableware contained on the list may be sold and used in your restaurant legally because they comply with U.S. FDA standards for lead release. They require a warning because they exceed the stricter lead exposure standards of California's Proposition 65.

If you need additional materials to send to restaurants, they are available FREE OF CHARGE by calling this toll-free number: 1-800-xxx-xxxx

Not all suppliers are participating in this court-ordered warning program. Suppliers that are not participating in this program may be providing ceramic tableware that requires Proposition 65 warnings. You should contact your suppliers to determine if they are in compliance with Proposition 65, since failure to comply could subject you to the legal actions referred to above.

Sincerely,

Name and title

(On letterhead with name, return address and telephone of sender)

**Re: Court-ordered Warnings for Ceramic Tableware**

Dear Restaurateur:

Important materials concerning the need to provide court-ordered warnings for certain ceramic tableware products that contain lead are attached to this letter. It is very important that you read and follow these instructions.

Enclosed are three very important items:

1. A list of certain brands and patterns of tableware that contain lead, and for which a warning under Proposition 65 is to be provided.
2. Signs for posting in your restaurant (or other food service establishment) IF, and only if, you currently use any tableware for which a warning is required.
3. Instructions for posting these signs.

These signs are being provided by tableware manufacturers as part of a court-approved settlement of a legal action brought under Proposition 65 by the California Attorney General. In this legal action, the Attorney General claims that certain brands and patterns of ceramic tableware contain lead, which passes into food and drink kept in those items. Lead is a chemical known to the State to cause birth defects or other reproductive harm, and the Attorney General claims that manufacturers and retailers of these products are legally required to provide consumers with a clear and reasonable warning of this exposure to lead. The companies sued by the Attorney General dispute these claims, and believe their products are safe, but have agreed to take various actions to settle the case.

If you do not post this sign as required, you risk further legal action by the Attorney General or others, in which monetary penalties could be sought.

The tableware contained on the list may be used in your restaurant legally because it complies with U.S. FDA standards for lead release. They require a warning because they exceed the stricter lead exposure standards of California's Proposition 65.

If you need additional signs, they are available FREE OF CHARGE by calling this toll-free number: 1-800-xxx-xxxx

Not all suppliers are participating in this court-ordered warning program. Suppliers that are not participating in this program may be providing ceramic tableware that requires Proposition 65 warnings. You should contact your suppliers to determine if they are in compliance with Proposition 65, since failure to comply could subject you to the legal actions referred to above.

Sincerely,

Name and title

## **Restaurant Tableware Warning Instructions**

*Here's what you need to do to comply with the court-ordered warning program:*

1. Check the list, and see if any of the ceramic tableware used in your establishment is listed as requiring a warning. If your tableware is on the list, or if your supplier of another brand of ceramic tableware informs you that its products require a warning, then you must post the enclosed signs. If your tableware is not on the list, and none of your other suppliers inform you that its products require a warning, then you do not need to post the signs.

2. Post the sign. If the tableware used in your establishment requires a warning, then post this sign where it will be seen by your customers before they consume food, such as near the main entrance, or near any podium or desk where people wait to be seated.

If you do not post the sign as required, you risk further legal action by the Attorney General or others, in which monetary penalties could be sought.

Remember, if none of the ceramic tableware used in your restaurant requires a warning, you do not need to post any of these materials.

# **SAMPLING TABLE - 95% CONFIDENCE LEVEL**

**UPPER LIMIT = 0.226 ppm.**

	Mean																
	0.05	0.06	0.07	0.08	0.09	0.10	0.11	0.12	0.13	0.14	0.15	0.16	0.17	0.18	0.19	0.20	0.21
Std. Dev.																	
0.01	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12
0.02	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12
0.03	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12
0.04	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	19
0.05	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	29
0.06	12	12	12	12	12	12	12	12	12	12	12	12	12	12	12	17	40
0.07	12	12	12	12	12	12	12	12	12	12	12	12	12	12	13	22	54
0.08	12	12	12	12	12	12	12	12	12	12	12	12	12	12	16	28	70
0.09	12	12	12	12	12	12	12	12	12	12	12	12	12	13	19	35	88
0.10	12	12	12	12	12	12	12	12	12	12	12	12	12	15	23	42	108
0.11	12	12	12	12	12	12	12	12	12	12	12	12	13	18	28	51	131
0.12	12	12	12	12	12	12	12	12	12	12	12	12	15	21	32	60	156
0.13	12	12	12	12	12	12	12	12	12	12	12	13	17	24	38	70	183
0.14	12	12	12	12	12	12	12	12	12	12	12	15	19	27	43	81	212
0.15	12	12	12	12	12	12	12	12	12	12	13	16	22	31	49	92	243
0.16	12	12	12	12	12	12	12	12	12	12	14	18	24	35	56	105	276
0.17	12	12	12	12	12	12	12	12	12	13	16	20	27	39	63	118	312
0.18	12	12	12	12	12	12	12	12	12	14	18	23	30	44	70	133	349
0.19	12	12	12	12	12	12	12	12	13	16	19	25	34	49	78	148	389
0.20	12	12	12	12	12	12	12	12	14	17	21	27	37	54	86	164	431
0.21	12	12	12	12	12	12	12	13	15	19	23	30	40	59	94	181	475
0.22	12	12	12	12	12	12	12	14	17	20	25	32	44	64	103	198	521
0.23	12	12	12	12	12	12	13	15	18	22	27	35	48	70	113	217	569
0.24	12	12	12	12	12	12	14	16	19	23	29	38	52	76	124	236	620
0.25	12	12	12	12	12	13	15	17	21	25	32	41	56	82	134	256	673
0.26	12	12	12	12	12	14	16	19	22	27	34	44	61	89	145	276	727
0.27	12	12	12	12	13	15	17	20	24	29	37	48	65	96	156	298	784
0.28	12	12	12	12	14	16	18	21	25	31	39	51	70	103	168	320	843
0.29	12	12	12	13	15	17	19	23	27	33	42	55	75	110	180	343	905
0.30	12	12	12	14	16	18	20	24	29	35	45	58	80	117	192	367	968

**MINIMUM SAMPLE SIZE = 12**





# **SAMPLING TABLE - 95% CONFIDENCE LEVEL**

**UPPER LIMIT = 0.100 ppm.**

	Mean								
	0.01	0.02	0.03	0.04	0.05	0.06	0.07	0.08	0.09
Std. Dev.									
0.01	12	12	12	12	12	12	12	12	12
0.02	12	12	12	12	12	12	12	12	13
0.03	12	12	12	12	12	12	12	12	27
0.04	12	12	12	12	12	12	12	13	46
0.05	12	12	12	12	12	12	12	19	70
0.06	12	12	12	12	12	12	13	27	100
0.07	12	12	12	12	12	12	17	36	136
0.08	12	12	12	12	12	13	22	46	177
0.09	12	12	12	12	12	16	27	57	224
0.10	12	12	12	12	13	19	32	70	276
0.11	12	12	12	12	16	23	39	84	334
0.12	12	12	12	13	18	27	46	100	397
0.13	12	12	12	15	21	31	53	117	466
0.14	12	12	13	17	24	36	61	136	540
0.15	12	12	15	19	27	40	70	156	620
0.16	12	13	17	22	30	46	79	177	705
0.17	12	15	18	24	34	51	89	200	796
0.18	13	16	20	27	37	57	100	224	892

**MINIMUM SAMPLE SIZE = 12**

**EXHIBIT H**

**E**

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**EXHIBIT E**

Proposition 65 WARNING: Consuming foods or beverages that have been kept or served in  
leaded crystal products or in certain ceramic tableware products will expose you to lead, a  
chemical known to the State of California to cause birth defects and other reproductive  
harm.

The products for which this warning is given are identified with this symbol:

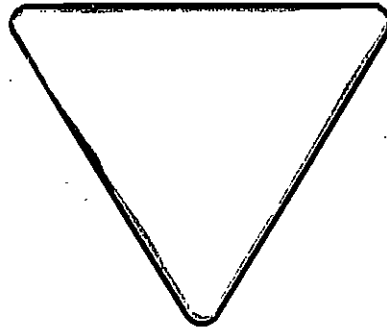
Yellow Triangle  
displayed on or next to the product.

**PROP 65**

# **WARNING**

**Consuming foods or beverages that have been kept or served in leaded crystal products or in certain ceramic tableware products will expose you to lead, a chemical known to the State of California to cause birth defects and other reproductive harm.**

**The products for which this warning is given are identified with this symbol:**

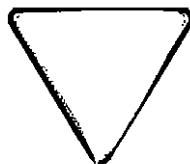


**displayed on or next to the product.**

**PROP 65**  
**WARNING**

Consuming foods or beverages that have been kept or served in leaded crystal products or in certain ceramic tableware products will expose you to lead, a chemical known to the State of California to cause birth defects and other reproductive harm.

The products for which this warning is given are identified with this symbol:



displayed on or next to the product.

**F**

**EXHIBIT F**

Proposition 65 WARNING: Consuming foods or beverages that have been kept or served in leaded crystal products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. *[If any of the following products are sold, include: "This warning does not apply to Baccarat decanters, flacons, stoppered pitchers, mustard and jam pots."]*

Proposition 65 WARNING: Use of the following ceramic tableware products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm: *[List each manufacturer and pattern name for which a warning is given]*



**PROP 65**

# **WARNING**

**Consuming foods or beverages that have been kept or served  
in leaded crystal products will expose you  
to lead, a chemical known to the State of California to  
cause birth defects or other reproductive harm. *[if any of the following  
products are sold, include: "This warning does not apply to Baccarat  
decanters, flacons, stoppered pitchers, mustard and jam pots."]***

**Use of the following ceramic tableware products will expose you to lead, a  
chemical known to the State of California to cause birth defects or other  
reproductive harm: *[List each manufacturer and pattern name for which a  
warning is given].***

**PROP 65**  
**WARNING**

Consuming foods or beverages that have been kept or served  
in leaded crystal products will expose you  
to lead, a chemical known to the State of California to  
cause birth defects or other reproductive harm. *[if any of the following  
products are sold, include: "This warning does not apply to Baccarat  
decanters, flacons, stoppered pitchers, mustard and jam pots."]*

Use of the following ceramic tableware products will expose you to lead, a  
chemical known to the State of California to cause birth defects or other  
reproductive harm: *[List each manufacturer and pattern name for which a  
warning is given].*

**G**

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**EXHIBIT G**

Attention California residents. Proposition 65 WARNING: Consuming foods or beverages that have been kept or served in leaded crystal products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm.

**H**

**EXHIBIT H**

Attention California residents. Proposition 65 WARNING: Consuming foods or beverages that have been kept or served in leaded crystal products will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. This warning does not apply to Baccarat decanters, flacons, stoppered pitchers, mustard and jam pots.

**I**

1  
2 **EXHIBIT I**

3 LIST OF PARTIES/COUNSEL TO RECEIVE NOTICES

4 **For Defendant: Home Depot U.S.A., Inc.**

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21 **For Plaintiff Mateel Environmental Justice Foundation**

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