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17 MATEEL ENVIRONMENTAL JUSTICE
18 FOUNDATION

19 SUPERIOR COURT OF THE STATE OF CALIFORNIA
20 COUNTY OF SAN FRANCISCO

21 MATEEL ENVIRONMENTAL JUSTICE
22 FOUNDATION,

23 Plaintiff,

24 v.

25 FISKARS LIVING US, LLC and FISKARS
26 BRANDS, INC.

27 Defendants.

No. CGC-21-592209

[PROPOSED] CONSENT JUDGMENT

28 **1. INTRODUCTION**

1.1. This Stipulation and Consent Judgment (the "Consent Judgment") is entered into to resolve plaintiff MATEEL ENVIRONMENTAL JUSTICE FOUNDATION's ("MEJF's" or "Plaintiff's") allegations in those certain April 23, 2021 and March 8, 2023 Notice of Intent to Sue letters ("NOVs" or "Notices") that defendants Fiskars Living US, LLC and Fiskars Brands, Inc. (collectively hereinafter, "Fiskars" or "Settling Defendants") violated Proposition 65 (Health & Saf. Code § 25249.6, *et seq.* or "the Act") by either importing, manufacturing, distributing,

1 selling, offering for sale or marketing, or some combination thereof in California ("Markets" or
2 "Marketing"), lead-containing crystal glass drinkware and/or food serveware ("Covered
3 Products") without providing clear and reasonable warnings to customers that the Covered
4 Products would expose them to lead, or lead and lead compounds (collectively, "Lead"),
5 chemicals listed as known to the State of California pursuant to the Act to cause birth defects or
6 other reproductive harm. Plaintiff and Fiskars are hereinafter sometimes referred to collectively
7 as the "Parties." Plaintiff and Fiskars entered into this Consent Judgment to resolve the above-
8 referenced allegations in the NOV, in the complaint filed May 27, 2021 and in the operative
9 First Amended Complaint filed June 22, 2021 ("FAC") that Fiskars violated Proposition 65.
10 MEJF asserts it is acting "in the public interest" within the meaning of Proposition 65 in the FAC
11 and for purposes of this Consent Judgment.

12 1.2. Fiskars maintains that it has at all times complied with the warning requirements
13 of Proposition 65. Fiskars expressly maintains that the August 23, 2001 ORDER ENTERING
14 MODIFIED CONSENT JUDGMENT in the case *Janet C. Mangini v. Action Industries, Inc.*,
15 San Francisco Superior Court Consolidated Matters Nos. 932724, 931884, and 938173
16 ("*Mangini* Consent Judgment") governs Proposition 65 warnings with respect to its Covered
17 Products, or certain of such products, and that Fiskars has complied with the *Mangini* Consent
18 Judgment. MEJF, however, disputes that Fiskars has complied at all times with Proposition 65
19 and that the *Mangini* Consent Judgment governs all, or certain, of Fiskars' Covered Products.
20 The Parties have vigorously disputed these issues. Subsequent discussions and negotiations
21 between the Parties have resulted in an agreement to stipulate to this Consent Judgment and to
22 ask that the Court approve it.

23 1.3. A substantial portion of the crystal glassware that Fiskars Markets in California
24 contains no intentionally added Lead. Covered Products made from crystal glass as defined by
25 categories 3 and/or 4 of Annex I of the European Union's Council Directive 69/493 EEC and that
26 contain no intentionally added Lead as any ingredient in the product shall be referred to herein as
27 "Crystalline." Crystalline may sometimes contain occasional and inadvertent trace amounts of
28 Lead. Crystal glassware that contains intentionally added Lead shall be referred to herein as

1 “Leaded Crystal.”

2 1.4. Mateel represents that it has tested dozens of samples of Crystalline made by or
3 for Fiskars, or its affiliates, or Marketed by Fiskars, and that Crystalline is readily distinguishable
4 from Leaded Crystal based on Lead content. Mateel further represents that the analytical results
5 of these tests provide convincing evidence that Crystalline does not leach Lead into food or
6 beverages stored in or served from it in amounts that would cause Lead exposures that require a
7 Proposition 65 warning. Ten samples of the same Crystalline wine glasses were subjected to a
8 leach test using 4% acetic acid (pH 2.1, which is the pH of common cola drinks) as a leaching
9 solution. Ten additional samples of the same Crystalline were subjected to a leach test using an
10 acetic acid solution with a pH of 3.1, the pH of white wine. The analytical method’s detection
11 limit for the analysis on both sets of samples was 0.6 micrograms per liter. Test results for all
12 twenty samples of Crystalline were uniformly non-detect. These results demonstrate that even
13 assuming that Lead was present in the leaching solution just below the 0.6 microgram per liter
14 detection limit, a person would have to drink more than a full bottle of wine to result in an
15 exposure exceeding 0.5 micrograms of Lead, the “safe harbor” Proposition 65 warning standard
16 for exposures to Lead as a reproductive toxicant.

17 1.5. For purposes of this Consent Judgment, Covered Products include both
18 Crystalline and Leaded Crystal that are intended to be used for storing or serving food or for
19 beverage consumption.

20 1.6. The Effective Date of this Consent Judgment shall be the date that MEJF serves
21 notice on Fiskars that it is entered as a judgment by the Court.

22 **2. CLEAR AND REASONABLE WARNINGS**

23 **2.1. Leaded Crystal**


24 2.1.1. Clear and reasonable warnings that use of Leaded Crystal exposes persons to
25 Lead, chemicals listed as known to the State of California to cause cancer and birth defects or
26 other reproductive harm, shall be provided by Fiskars under this Consent Judgment in the
27 manner provided in Paragraphs 2.1.3, 2.1.4, 2.1.5, 2.1.6 and 2.1.7 below. Upon receiving the
28 written agreement of the Attorney General’s Office, Fiskars also may provide warnings in an

1 alternative manner to the requirements of this Paragraph 2.

2 2.1.2. No later than forty five (45) days after the Effective Date of this Consent
3 Judgment, Fiskars, or an entity acting on its behalf, shall at its sole election undertake one of the
4 following three (3) alternatives when Marketing Leaded Crystal, and may change which
5 alternative it elects over time, but must undertake, or continue to undertake, at least one of the
6 alternatives:

7 a. Mail to the central purchasing office and, if different, also to the
8 authorized agent, for all distributors and retail stores with whom it transacts business for
9 sale of Leaded Crystal in California: 1) the letter and Leaded Crystal stickering
10 instructions attached as Exhibit A (incorporated herein by this reference) to this Consent
11 Judgment which shall additionally attach a list of each Leaded Crystal brand name,
12 pattern and Stock Keeping Unit ("SKU") to which the letter is intended to apply; and 2)
13 sheets of sticker/labels ("Sticker Warnings") that, together, contain at least 800 Sticker
14 Warnings. Fiskars shall confirm receipt of the mailings. Each Sticker Warning must
15 meet the content requirements described in 27 Cal. Code Regs. § 25603(b)¹ and the type
16 size requirements described in 27 Cal. Code Regs. § 25601(c). The Sticker Warnings
17 shall be printed in color on Avery Return Address Label No. 5167 label sheets or their
18 functional equivalent. Warning language on the Sticker Warnings must be in 8 point or
19 larger type. Thereafter, Fiskars, or an entity acting on its behalf, shall provide such
20 sheets of Sticker Warnings free of charge, upon request, to any entity with whom Fiskars
21 then or at any time in the future begins to do business by Marketing Leaded Crystal.

22 b. Fiskars may implement the warning terms of the *Mangini* Consent
23 Judgment but, additionally, shall include a supplemental information statement to each
24 person to whom Fiskars provides the *Mangini* Consent Judgment warning identifying the
25 brand names and SKUs of such Covered Products that are Leaded Crystal. Fiskars shall
26

27 ¹ The following shall be acceptable forms of Sticker Warning:  Birth Defects and
28 Reproductive Harm—www.P65Warnings.ca.gov. Or, alternatively, the text following the
yellow triangle could be "Cancer and Reproductive Harm—www.P65Warnings.ca.gov".

1 include 200 such Sticker Warnings and shall supply additional Sticker Warnings upon
2 request, without charge, to the persons receiving the *Mangini* Consent Judgment
3 warnings. If the person receiving the *Mangini* Consent Judgment warnings is not the
4 authorized agent, a copy also shall be provided to the authorized agent. In all
5 notifications Fiskars shall confirm receipt of the communication.

6 c. Fiskars may implement the warning terms of the *Mangini* Consent
7 Judgment, and, additionally, shall either include a statement "Lead," "Lead Crystal," or
8 "Leaded Crystal" printed on, or affixed to, the exterior, consumer ready packaging of
9 Leaded Crystal that are Covered Products, *or* a sticker on each individual unit of such
10 Leaded Crystal that are Covered Products stating either "Lead," "Lead Crystal," or
11 "Leaded Crystal," or some combination of the forgoing, so long as one or another of
12 these forms of notification of Lead in the Covered Products is implemented for all
13 Leaded Crystal that are Covered Products. This option shall apply to Covered Products
14 manufactured forty-five (45) or more days after the Effective Date.

15 2.1.3. Beginning no later than the first year anniversary of the Effective Date, Fiskars, or
16 an entity acting on Fiskars's behalf, shall elect and implement, at least annually, at least one of
17 the three warning alternatives in Section 2.1.2. (except that if Fiskars elects the option in Section
18 2.1.2.c, then in that case the stickering and/or labeling obligations in Section 2.1.2.c. shall be
19 implemented continuously as Covered Products that are Leaded Crystal are manufactured).
20 Fiskars shall implement the obligations in Section 2.1.5, 2.1.6 and 2.1.7, with the last such
21 election and implementation of these obligations being required by December 31st of the final
22 year Fiskars Markets Leaded Crystal. Once Fiskars no longer Markets Leaded Crystal that are
23 Covered Products, the obligations under this Consent Judgment as to such Leaded Crystal shall
24 terminate as to Fiskars, but Covered Products will continue to be deemed in compliance with
25 Proposition 65 and this Consent Judgment at all times through the time the last of such Covered
26 Products are sold through all relevant supply chains and no further Marketing by any person
27 occurs.

28 2.1.4. Fiskars, or a person acting on its behalf, shall provide to each of its customers that

1 Fiskars knows or has reason to believe will sell Fiskars's Leaded Crystal to residents of
2 California by mail warnings in accordance with the applicable terms (including Paragraph 15) of
3 the *Mangini* Consent Judgment.

4 2.1.5. If Fiskars sells its Leaded Crystal by mail order/Internet directly to residents of
5 the State of California, Fiskars, or a person acting on its behalf, shall provide clear and
6 reasonable warnings in accordance with the applicable terms (including Paragraph 16) of the
7 *Mangini* Consent Judgment.

8 2.1.6. If Fiskars transacts business for the commercial use of Leaded Crystal by
9 restaurant suppliers, restaurants or food service establishments in California, Fiskars, or a person
10 acting on its behalf, shall provide clear and reasonable warnings in accordance with the
11 applicable terms (including Paragraph 17) of the *Mangini* Consent Judgment.

12 2.2. **Crystalline**

13 2.2.1. Proposition 65 warning are not required by any person for Covered Products that
14 are Crystalline. It is a material term of this Consent Judgment that the Court expressly
15 determine upon its approval of this Consent Judgment that Proposition 65 warnings respecting
16 Lead are not required for Covered Products that are Crystalline, and such determination is a final
17 conclusion of law as to Covered Products that are Crystalline.

18 2.3. If Fiskars has complied with the terms of Paragraph 2.1 above, then Fiskars shall
19 not be found to have violated this Consent Judgment or Proposition 65 where a retail store,
20 distributor, mail order supplier, Internet seller, restaurant supplier, restaurant, winery or any
21 other person required to provide Proposition 65 warnings for Leaded Crystal fails to provide
22 such warnings.

23 2.4. If one of the compliance alternatives elected by Fiskars requires a person
24 downstream in the Covered Product distribution chain to take action with regard to warnings
25 (such as applying stickers to Leaded Crystal) and such person fails in a material respect to take
26 the requested action, that person may not be a beneficiary under this Consent Judgment for a
27 specific Marketed Covered Product where the requested action was not taken (as detailed in
28 Exhibit A). Nothing in this Consent Judgment, however, limits any right, defense, entitlement or

1 argument that such person may assert as to compliance with Proposition 65, it being expressly
2 recognized that such person could be in compliance with Proposition 65 via an alternative
3 compliance mechanism.

4 **3. MONETARY TERMS**

5 3.1. **Attorneys' Fees**: No later than five (5) business days after the Effective Date of
6 this Consent Judgment, Fiskars shall pay the sum of \$210,000.00 to the "Klamath Environmental
7 Law Center" as complete reimbursement for any and all expenses and attorneys' fees incurred by
8 MEJF in this matter relating to allegations of violations of the Consent Judgment. The
9 reimbursement shall cover all attorneys' fees, investigative fees, testing and expert fees, and all
10 other fees and expenses of any kind incurred by MEJF investigating, bringing this matter to
11 Settling Defendant's attention, negotiating the settlement of the matter, and obtaining court
12 approval of this Amendment.

13 3.2. **Civil Penalty**: No later than five (5) business days after the Effective Date of this
14 Consent Judgment, Fiskars shall pay the sum of \$35,000.00 in civil penalties. This civil penalty
15 payment shall be divided as follows: \$26,250.00 shall be paid to the Office of Environmental
16 Health Hazard Assessment as the State of California's share of the civil penalties assessed in this
17 case; and \$8,750.00 shall be paid to plaintiff, Mateel Environmental Justice Foundation as its
18 share of the civil penalties assessed in this case. The payments required by this Section 3 shall
19 be made by separate checks and shall be delivered to the attention of William Verick, Klamath
20 Environmental Law Center, 1125 Sixteenth Street, Suite 204, Arcata, California 95521. Plaintiff
21 and its counsel shall upon request promptly provide any necessary taxpayer identification
22 information for Fiskars to process the payments due herein.

23 **4. ENFORCEMENT**

24 4.1. The terms of this Consent Judgment are enforceable only by and among the
25 Parties hereto. A prevailing Party shall be entitled to its reasonable attorneys' fees and costs in
26 connection with any successful motion to enforce the terms of this Consent Judgment.

27 **5. MATTERS COVERED BY THIS CONSENT JUDGMENT/PUBLIC RELEASE**

28 5.1. As to those matters alleged in the Notices, Mateel acting on its own behalf and in

1 the public interest releases Fiskars, as well as its affiliates, subsidiaries, parents, divisions,
2 suppliers, importers, manufacturers, distributors, licensors, licensees, retailers, and/or customers,
3 and their respective predecessors, successors and assigns (collectively, "Releasees"), from all
4 claims for violations of Proposition 65 up through the Effective Date based on exposure to Lead
5 in the Covered Products. As to Covered Products, and as to those matters alleged in the Notices,
6 this Consent Judgment is a full, final and binding resolution between Plaintiff, acting on behalf
7 of the public interest, on the one hand, and Fiskars and other Releasees on the other hand, of any
8 actual or alleged violation of Proposition 65 for failure to provide clear, reasonable, and lawful
9 warnings under Proposition 65 of alleged or actual exposure to Lead contained in or otherwise
10 associated with Covered Products Marketed by, for, or on behalf of Fiskars or any other Releasee
11 up through the Effective Date. On and after the Effective Date, as to Covered Products,
12 compliance by Fiskars with the terms of this Consent Judgment resolves any issue, past, present
13 and in the future, concerning compliance by any Releasee with the requirements of Proposition
14 65, subject to the terms of Section 2.4 and Exhibit A.

15 **6. COMPREHENSIVE AND GLOBAL RELEASE**

16 6.1. As to Covered Products, MEJF, for itself, and its agents and attorneys, releases
17 and forever discharges any and all claims against Fiskars and any other Releasee and their past,
18 present, and future affiliates, subsidiaries, parents, divisions, suppliers, importers, manufacturers,
19 distributors, licensors, licensees, retailers, and/or customers, and their respective predecessors,
20 successors and assigns, from all claims for violations of Proposition 65 up and through the
21 Effective Date based on exposure to Lead from Covered Products as set forth in the FAC and
22 the Notices. On and after the Effective Date, compliance by Fiskars with the terms of this
23 Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to Lead
24 from Covered Products.

25 6.2. As to Covered Products, this Consent Judgment shall be effective as a full and
26 final accord, satisfaction and release by MEJF on its own behalf (and not on behalf of the public
27 interest) as to Fiskars and its past, present, and future affiliates, subsidiaries, parents, divisions,
28 suppliers, importers, manufacturers, distributors, licensors, licensees, retailers, and/or customers,

1 and their respective predecessors, successors and assigns, of and from any and all matters hereby
2 released. MEJF, on its own, and on behalf of its agents and attorneys, acknowledges familiarity
3 with and understanding of California Civil Code § 1542, which provides as follows:

4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
5 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT
6 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
7 RELEASE AND THAT IF KNOWN, BY HIM OR HER WOULD HAVE
8 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
9 DEBTOR OR RELEASED PARTY.

10 To the extent that Section 1542 or any similar law or statute may otherwise apply to this Consent
11 Judgment, or the claims released, MEJF hereby waives and relinquishes as to all matters released
12 hereunder all rights and benefits it has, or may have, under Section 1542 or under the laws or
13 common law of any other jurisdiction to the same or similar effect. MEJF further acknowledges
14 on its own behalf (and not on behalf of the public interest) that subsequent to the execution of
15 this Consent Judgment, MEJF may discover claims that were unsuspected at the time this
16 Consent Judgment was executed, and which might have materially affected its decision to
17 execute this Consent Judgment, but nevertheless MEJF on its own behalf (and not on behalf of
18 the public interest) releases Fiskars and its past, present, and future affiliates, subsidiaries,
19 parents, divisions, suppliers, importers, manufacturers, distributors, licensors, licensees, retailers,
20 and/or customers, and their respective predecessors, successors and assigns, from any and all
21 such claims whether known or unknown, suspected or unsuspected, at the time of the execution
22 of this Consent Judgment.

23 **7. MISCELLANEOUS**

24 7.1. This Consent Judgment is entered into to resolve disputed claims concerning
25 Fiskars' compliance with Proposition 65. Nothing in this Consent Judgment shall be construed
26 as an admission against interest of any fact, conclusion of law, issue of law, or violation of law
27 or the Consent Judgment, nor shall compliance with this Consent Judgment constitute or be
28 construed as an admission against interest of any fact, conclusion of law, issue of law, or
violation of law. This Consent Judgment and/or compliance with its terms may not be used in
any proceeding as an admission against interest or evidence of any fact, wrongdoing, violation,

1 misconduct, culpability, or liability on the part of Fiskars. Fiskars expressly contends that it has
2 at all times complied with Proposition 65, and that all products it sells and/or has sold, including
3 but not limited to the Covered Products, comply with all laws and are completely safe for their
4 intended use.

5 7.2. Joint Preparation. The Parties have jointly participated in the preparation of this
6 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.
7 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be
8 interpreted against any Party as a result of the manner of the preparation of this Consent
9 Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction
10 providing that ambiguities are to be resolved against the drafting Party should not be employed
11 in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive
12 California Civil Code § 1654.

13 7.3. Sole and entire Agreement. This Consent Judgment contains the sole and entire
14 agreement and understanding of the Parties with respect to the entire subject matter hereof, and
15 any and all prior discussions, negotiations, commitments and understandings related hereto are
16 merged herein. No representations, oral or otherwise, express or implied, other than those
17 contained herein have been made by any Party hereto with respect to the subject matter hereof.
18 No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to
19 exist or to bind any of the Parties with respect to the subject matter hereof. Any modification
20 of this Consent Judgment shall be in writing and subject to Court approval via a noticed
21 motion, including service of a copy of any such proposed modification to the Attorney General.
22 Notice to any Party shall be provided to the person or persons designated below:
23 For Mateel:

24 William Verick, Esq.
25 KLAMATH ENVIRONMENTAL LAW CENTER
26 1125 Sixteenth Street
27 Arcata, CA 95521
Telephone: (707) 630-5061
Email: wverick@igc.org

28 For Fiskars:

Judith Praitis, Esq.
Faegre Drinker Biddle & Reath, LLP
1800 Century Park East, Suite 1500
Los Angeles, California 90067
Telephone: (310) 203-4022
Email: Judith.Praitis@faegredrinker.com

7.4. Authority to Stipulate: Each signatory to this Consent Judgment certifies that he or she is fully authorized by the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the Party represented and legally to bind that Party.

7.5. Execution in Counterparts: This Consent Judgment may be executed in counterparts and/or by facsimile or pdf, which taken together shall be deemed to constitute one original document.

7.6. Court Approval: If the Court does not approve this Consent Judgment, it shall be of no force or effect and cannot be used in any proceeding for any purpose. The Court shall retain jurisdiction to enforce the terms hereof.

7.7. Application: This Consent Judgment is subject to, and shall be interpreted under, the laws of the State of California, regardless of where any Party has executed it. The obligations of this Consent Judgment to provide warnings under Proposition 65 shall not apply to Covered Products that are not sold in California or are not sold to California consumers. Upon approval by the Court, this Consent Judgment shall be binding on the Parties and their respective successors or assigns.

7.8. Final Judgment: Upon approval by the Court this Consent Judgment shall be a final judgment, and compliance herewith by Fiskars shall be deemed to constitute compliance with Proposition 65 with regard to warnings about exposure to Lead in any Covered Products, regardless of the compliance alternative herein Fiskars elects for Leaded Crystal, and also shall constitute a conclusive determination that no Proposition 65 warning for Lead is required for Crystalline.

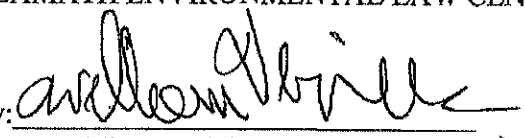
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IT IS SO STIPULATED:

DATED: June 2, 2023

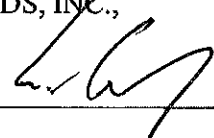
KLAMATH ENVIRONMENTAL LAW CEN

By: 
William Verick

MATEEL ENVIRONMENTAL
JUSTICE FOUNDATION

DATED: June 5, 2023

FISKARS LIVING US, LLC, FISKARS
BRANDS, INC.,

By: 
Title: President

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

JUDGE OF THE SUPERIOR COURT

EXHIBIT A

Dear Retailer:

Important materials concerning the need to provide court-ordered warnings for certain leaded crystal drinkware and serveware are attached to this letter. This letter only applies to products that are used for serving or storing food or beverages. It does not apply to figurines, vases and other items which are not designed for use with food or beverages. It is very important that you read and follow the instructions enclosed with this letter.

Enclosed are label sheets that in total contain 800 adhesive labels printed with a court-ordered warning (Warning Stickers). These Warning Stickers must be affixed to the Leaded Crystal Drinkware and Serveware products described by brand, pattern and Stock Keeping Unit (SKU) below.

For Leaded Crystal Serveware and Drinkware products that are sold at your business inside packaging such as a bag or box, a Warning Sticker must be affixed to the outside of the packaging of each bag or box. For Leaded Crystal Serveware and Drinkware products that are sold at your business as individual, unpackaged, glasses, flutes, tumblers, decanters, etc., a Warning Sticker must be affixed to each individual glass, flute, tumbler, decanter, etc.

If you do not affix these Warning Stickers to Leaded Crystal Drinkware and Serveware by 3 months after effective date, you risk further legal action by the Attorney General or others, in which monetary penalties could be sought,

You are receiving these materials as part of a court-approved settlement of a legal action brought under "Proposition 65" by a private party. In this legal action the private party claims that certain brands of Leaded Crystal serveware and drinkware contain "lead" and "lead and lead compounds" (collectively, "Lead") which passes into food and drink kept in, or served from, those items in excess of Proposition 65 warning levels. Lead is a chemical listed under Proposition 65 as known to the State of California to cause cancer, birth defects or other reproductive harm, and the private party 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. Defendants in the case dispute these claims, but agreed to take various actions to settle the case.

The Leaded Crystal drinkware and serveware listed below may be sold legally in California because they comply with international standards for Lead release. They require a warning because the plaintiff in a case asserts that the stricter Lead exposure standards of Proposition 65 mean a warning is required.