

1 WILLIAM VERICK, SBN 140972  
2 KLAMATH ENVIRONMENTAL LAW CENTER  
3 1125 Sixteenth Street  
4 Arcata, CA 95521  
5 Telephone: (707) 630-5061  
6 Facsimile: (707) 630-5064  
7 Email: wverick@igc.org

8 DAVID WILLIAMS, SBN 144479  
9 BRIAN ACREE, SBN 202505  
10 1700 Ygnacio Valley Road, Suite 202  
11 Walnut Creek, CA 94598  
12 Telephone: (510) 847-2356  
13 Facsimile: (925) 332-0352  
14 Email: [dhwill7@gmail.com](mailto:dhwill7@gmail.com)  
15 Email: [brian@brianacree.com](mailto:brian@brianacree.com)

16 Attorneys for Plaintiff  
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 cancer, birth  
6 defects or other reproductive harm. Plaintiff and Fiskars are hereinafter sometimes referred to  
7 collectively as the “Parties.” Plaintiff and Fiskars entered into this Consent Judgment to resolve  
8 the above-referenced allegations in the NOV, in the complaint filed May 27, 2021 and in the  
9 operative First Amended Complaint filed June 22, 2021 (“FAC”) that Fiskars violated  
10 Proposition 65. MEJF asserts it is acting “in the public interest” within the meaning of  
11 Proposition 65 in the FAC 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. A copy of the operative terms and exhibits pertinent to this Consent Judgment of the  
19 *Mangini* Consent Judgment are attached as Exhibit A hereto. MEJF, however, disputes that  
20 Fiskars has complied at all times with Proposition 65 and that the *Mangini* Consent Judgment  
21 governs all, or certain, of Fiskars’ Covered Products. The Parties have vigorously disputed  
22 these issues. Subsequent discussions and negotiations between the Parties have resulted in an  
23 agreement to stipulate to this Consent Judgment and to ask that the Court approve it.

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

1 Lead. Crystal glassware that contains intentionally added Lead shall be referred to herein as  
2 “Leaded Crystal.”

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

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

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

## 23 **2. CLEAR AND REASONABLE WARNINGS**

### 24 **2.1. Leaded Crystal**

25 2.1.1. Clear and reasonable warnings that use of Leaded Crystal exposes persons to  
26 Lead, chemicals listed as known to the State of California to cause cancer and birth defects or  
27 other reproductive harm, shall be provided by Fiskars under this Consent Judgment in the  
28 manner provided in Paragraphs 2.1.2, 2.1.4, 2.1.5, 2.1.6 and 2.1.7 below. Upon receiving the

1 written agreement of the Attorney General’s Office, Fiskars also may provide warnings in an  
2 alternative manner to the requirements of this Paragraph 2. Upon receiving written agreement of  
3 MEJF, Fiskars also may provide warnings in an alternative manner to the requirements of this  
4 Paragraph 2, but the Attorney General’s Office must first be advised of any such alternative  
5 warnings and not object to any such alternative that MEJF approves. MEJF shall consider  
6 requests for alternative warnings in good faith and not unreasonably deny its consent, provided  
7 the Attorney General’s Office likewise does not object to alternative warnings agreed to by the  
8 Parties.

9 2.1.2. No later than forty five (45) days after the Effective Date of this Consent  
10 Judgment, Fiskars, or an entity acting on its behalf, shall undertake the measures herein to  
11 provide Proposition 65 warnings when Marketing Leaded Crystal.

12 a. Fiskars shall implement the warning terms of the *Mangini* Consent  
13 Judgment as provided for therein, including sending 1) The warning sign that is attached  
14 at Exhibit 3 to the *Mangini* Consent Judgment and 2) the “Retailer Instructions” attached  
15 as Exhibit 4 to the *Mangini* Consent Judgment (both of these Exhibits to the *Mangini*  
16 Consent Judgment are attached hereto at Exhibit A to this Consent Judgment). In all  
17 notifications Fiskars shall confirm receipt of the communication.

18 b. Additionally, Fiskars shall identify each Leaded Crystal product by  
19 attaching a sticker on the product, or by attaching a sticker on the product’s consumer  
20 packaging, or by printing on the product’s consumer packaging, labeling that it is  
21 “Leaded Crystal,” stating either “Lead,” “Lead Crystal,” or “Leaded Crystal,” or some  
22 combination of the forgoing (“Leaded Crystal Identification”). The Leaded Crystal  
23 Identification options may also employ all capitalized letters. The process of stickering,  
24 affixing, printing or otherwise labeling the Leaded Crystal shall commence for Covered  
25 Products manufactured forty-five (45) or more days after the Effective Date. If Fiskars  
26 already has sent its annual warning materials and notifications under the *Mangini*  
27 Consent Judgment within six months of when the actions under this Section 2.1.2 are due  
28 under this Consent Judgment, then Fiskars must commence the Leaded Crystal

1 Identification measures but need not repeat in 2023 the *Mangini* Consent Judgment  
2 notifications.

3 2.1.3. Beginning no later than the first year anniversary of the Effective Date in 2024,  
4 Fiskars, or an entity acting on Fiskars's behalf, shall implement annually the warnings in Section  
5 2.1.2. Fiskars shall continue to implement the ongoing and annual obligations in Sections 2.1.2,  
6 2.1.4, 2.1.5, 2.1.6 and 2.1.7, with the last such implementation of these obligations being  
7 required by December 31<sup>st</sup> of the final year Fiskars Markets Leded Crystal. Once Fiskars no  
8 longer Markets Leded Crystal that are Covered Products, the obligations under this Consent  
9 Judgment as to such Leded Crystal shall terminate as to Fiskars, but Covered Products will  
10 continue to be deemed in compliance with Proposition 65 and this Consent Judgment at all times  
11 through the time the last of such Covered Products are sold through all relevant supply chains  
12 and no further Marketing by any person occurs.

13 2.1.4. Fiskars, or a person acting on its behalf, shall provide to each of its customers that  
14 Fiskars knows or has reason to believe will sell Fiskars's Leded Crystal to residents of  
15 California by mail warnings in accordance with the applicable terms (including Paragraph 15) of  
16 the *Mangini* Consent Judgment.

17 2.1.5. If Fiskars sells its Leded Crystal by mail order/Internet directly to residents of  
18 the State of California, Fiskars, or a person acting on its behalf, shall provide clear and  
19 reasonable warnings in accordance with the applicable terms (including Paragraph 16) of the  
20 *Mangini* Consent Judgment.

21 2.1.6. If Fiskars transacts business for the commercial use of Leded Crystal by  
22 restaurant suppliers, restaurants or food service establishments in California, Fiskars, or a person  
23 acting on its behalf, shall provide clear and reasonable warnings in accordance with the  
24 applicable terms (including Paragraph 17) of the *Mangini* Consent Judgment.

25 2.1.7. If the *Mangini* Consent Judgment is modified by Court order, Fiskars shall  
26 comply with such modified judgment to the extent compliance does not cause a conflict with this  
27 Consent Judgment. In the event of a conflict with this Consent Judgment and any future  
28 modification of the *Mangini* Consent Judgment, this Consent Judgment shall control. If the

1 *Mangini* Consent Judgment is terminated as to Covered Products that are Leaded Crystal, then  
2 the Parties hereto shall meet and confer in good faith to determine if this Consent Judgment  
3 likewise should be terminated, or modified. If the Parties do not agree, then either Party may  
4 move the Court upon a noticed motion (with a copy to the Office of the Attorney General) to  
5 terminate or modify this Consent Judgment.

6 2.2. **Crystalline**

7 2.2.1. Proposition 65 warning are not required by any person for Covered Products that  
8 are Crystalline. It is a material term of this Consent Judgment that the Court expressly  
9 determine upon its approval of this Consent Judgment that Proposition 65 warnings respecting  
10 Lead are not required for Covered Products that are Crystalline, and such determination is a final  
11 conclusion of law as to Covered Products that are Crystalline.

12 2.3. If Fiskars has complied with the terms of Paragraph 2.1 above, then Fiskars  
13 shall not be found to have violated this Consent Judgment or Proposition 65 where a retail store,  
14 distributor, mail order supplier, Internet seller, restaurant supplier, restaurant, winery or any  
15 other person required to provide Proposition 65 warnings for Leaded Crystal fails to provide  
16 such warnings. Nothing in this Consent Judgment, however, limits any right, defense,  
17 entitlement or argument that such person may assert as to compliance with Proposition 65, it  
18 being expressly recognized that such person could be in compliance with Proposition 65 via an  
19 alternative compliance mechanism.

20 3. **MONETARY TERMS**

21 3.1. **Attorneys' Fees:** No later than five (5) business days after the Effective Date of  
22 this Consent Judgment, Fiskars shall pay the sum of \$210,000.00 to the "Klamath Environmental  
23 Law Center" as complete reimbursement for any and all expenses and attorneys' fees incurred by  
24 MEJF in this matter relating to allegations of violations of the Consent Judgment. The  
25 reimbursement shall cover all attorneys' fees, investigative fees, testing and expert fees, and all  
26 other fees and expenses of any kind incurred by MEJF investigating, bringing this matter to  
27 Settling Defendant's attention, negotiating the settlement of the matter, and obtaining court  
28 approval of this Amendment.

1           3.2.     **Civil Penalty:** No later than five (5) business days after the Effective Date of this  
2 Consent Judgment, Fiskars shall pay the sum of \$35,000.00 in civil penalties. This civil penalty  
3 payment shall be divided as follows: \$26,250.00 shall be paid to the Office of Environmental  
4 Health Hazard Assessment as the State of California's share of the civil penalties assessed in this  
5 case; and \$8,750.00 shall be paid to plaintiff, Mateel Environmental Justice Foundation as its  
6 share of the civil penalties assessed in this case. The payments required by this Section 3 shall  
7 be made by separate checks and shall be delivered to the attention of William Verick, Klamath  
8 Environmental Law Center, 1125 Sixteenth Street, Suite 204, Arcata, California 95521. Plaintiff  
9 and its counsel shall upon request promptly provide any necessary taxpayer identification  
10 information for Fiskars to process the payments due herein.

11     **4.     ENFORCEMENT**

12           4.1.     The terms of this Consent Judgment are enforceable only by and among the  
13 Parties hereto. A prevailing Party shall be entitled to its reasonable attorneys' fees and costs in  
14 connection with any successful motion to enforce the terms of this Consent Judgment. The  
15 Court shall retain ongoing jurisdiction to enforce the terms of this Consent Judgment.

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

17           5.1.     As to those matters alleged in the Notices, Mateel acting on its own behalf and in  
18 the public interest, releases Fiskars, as well as its affiliates, subsidiaries, parents, divisions,  
19 suppliers, importers, manufacturers, distributors, licensors, licensees, retailers, and/or customers,  
20 and their respective predecessors, successors and assigns (collectively, "Releasees"), from all  
21 claims for violations of Proposition 65 up through the Effective Date based on exposure to Lead  
22 in the Covered Products. As to Covered Products, and as to those matters alleged in the Notices,  
23 this Consent Judgment is a full, final and binding resolution between Plaintiff, acting on behalf  
24 of the public interest, on the one hand, and Fiskars and other Releasees on the other hand, of any  
25 actual or alleged violation of Proposition 65 for failure to provide clear, reasonable, and lawful  
26 warnings under Proposition 65 of alleged or actual exposure to Lead contained in or otherwise  
27 associated with Covered Products Marketed by, for, or on behalf of Fiskars or any other Releasee  
28 up through the Effective Date. On and after the Effective Date, as to Covered Products,

1 compliance by Fiskars with the terms of this Consent Judgment resolves any issue, past, present  
2 and in the future, concerning compliance by Fiskars with the requirements of Proposition 65,  
3 subject to the terms of Section 2.3. On and after the Effective Date, as to Covered Products, if a  
4 Releasee complies with the Retailers Instructions that Fiskars provides to the Releasee pursuant  
5 to Sections 2.1.2(a) and (b), above, and subject to Section 2.3, this Consent Judgment resolves  
6 any issue, past, present and in the future, concerning compliance by that Releasee with the  
7 requirements of Proposition 65.

8 **6. COMPREHENSIVE AND GLOBAL RELEASE**

9 6.1. As to Covered Products, MEJF, for itself, and its agents and attorneys, releases  
10 and forever discharges any and all claims against Fiskars and any other Releasee and their past,  
11 present, and future affiliates, subsidiaries, parents, divisions, suppliers, importers, manufacturers,  
12 distributors, licensors, licensees, retailers, and/or customers, and their respective predecessors,  
13 successors and assigns, from all claims for violations of Proposition 65 up and through the  
14 Effective Date based on exposure to Lead from Covered Products as set forth in the FAC and the  
15 Notices. On and after the Effective Date, compliance by Fiskars with the terms of this Consent  
16 Judgment constitutes compliance with Proposition 65 with respect to exposures to Lead from  
17 Covered Products.

18 6.2. As to Covered Products, this Consent Judgment shall be effective as a full and  
19 final accord, satisfaction and release by MEJF on its own behalf (and not on behalf of the public  
20 interest) as to Fiskars and its past, present, and future affiliates, subsidiaries, parents, divisions,  
21 suppliers, importers, manufacturers, distributors, licensors, licensees, retailers, and/or customers,  
22 and their respective predecessors, successors and assigns, of and from any and all matters hereby  
23 released. MEJF, on its own, and on behalf of its agents and attorneys, acknowledges familiarity  
24 with and understanding of California Civil Code § 1542, which provides as follows:

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



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

14 **7. MISCELLANEOUS**

15 7.1. This Consent Judgment is entered into to resolve disputed claims concerning  
16 Fiskars' compliance with Proposition 65. Nothing in this Consent Judgment shall be construed  
17 as an admission against interest of any fact, conclusion of law, issue of law, or violation of law  
18 or the Consent Judgment, nor shall compliance with this Consent Judgment constitute or be  
19 construed as an admission against interest of any fact, conclusion of law, issue of law, or  
20 violation of law. This Consent Judgment and/or compliance with its terms may not be used in  
21 any proceeding as an admission against interest or evidence of any fact, wrongdoing, violation,  
22 misconduct, culpability, or liability on the part of Fiskars. Fiskars expressly contends that it has  
23 at all times complied with Proposition 65, and that all products it sells and/or has sold, including  
24 but not limited to the Covered Products, comply with all laws and are completely safe for their  
25 intended use.

26 7.2. Joint Preparation. The Parties have jointly participated in the preparation of this  
27 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties.  
28 Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be

1 interpreted against any Party as a result of the manner of the preparation of this Consent  
2 Judgment. Each Party to this Consent Judgment agrees that any statute or rule of construction  
3 providing that ambiguities are to be resolved against the drafting Party should not be employed  
4 in the interpretation of this Consent Judgment and, in this regard, the Parties hereby waive  
5 California Civil Code § 1654.

6 7.3. Sole and Entire Agreement. This Consent Judgment contains the sole and entire  
7 agreement and understanding of the Parties with respect to the entire subject matter hereof, and  
8 any and all prior discussions, negotiations, commitments and understandings related hereto are  
9 merged herein. No representations, oral or otherwise, express or implied, other than those  
10 contained herein have been made by any Party hereto with respect to the subject matter hereof.  
11 No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to  
12 exist or to bind any of the Parties with respect to the subject matter hereof. Any modification  
13 of this Consent Judgment shall be in writing and subject to Court approval via a noticed  
14 motion, including service of a copy of any such proposed modification to the Attorney General.  
15 Notice to any Party shall be provided to the person or persons designated below:  
16 For Mateel:

17 William Verick, Esq.  
18 KLAMATH ENVIRONMENTAL LAW CENTER  
19 1125 Sixteenth Street  
20 Arcata, CA 95521  
Telephone: (707) 630-5061  
Email: [wverick@igc.org](mailto:wverick@igc.org)

21 For Fiskars:

22 Judith Praitis, Esq.  
23 Faegre Drinker Biddle & Reath, LLP  
24 1800 Century Park East, Suite 1500  
Los Angeles, California 90067  
Telephone: (310) 203-4022  
Email: [Judith.Praitis@faegredrinker.com](mailto:Judith.Praitis@faegredrinker.com)

25 7.4. Authority to Stipulate: Each signatory to this Consent Judgment certifies that he  
26 or she is fully authorized by the Party he or she represents to enter into this Consent Judgment  
27 and to execute it on behalf of the Party represented and legally to bind that Party.

28 7.5. Execution in Counterparts: This Consent Judgment may be executed in

1 counterparts and/or by facsimile or pdf, which taken together shall be deemed to constitute one  
2 original document.

3 7.6. Court Approval: If the Court does not approve this Consent Judgment, it shall be  
4 of no force or effect and cannot be used in any proceeding for any purpose. The Court shall  
5 retain jurisdiction to enforce the terms hereof.

6 7.7. Application: This Consent Judgment is subject to, and shall be interpreted under,  
7 the laws of the State of California, regardless of where any Party has executed it. The  
8 obligations of this Consent Judgment to provide warnings under Proposition 65 shall not apply to  
9 Covered Products that are not sold in California or are not sold to California consumers. Upon  
10 approval by the Court, this Consent Judgment shall be binding on the Parties and their respective  
11 successors or assigns.

12 7.8. Final Judgment: Upon approval by the Court this Consent Judgment shall be a  
13 final judgment, and compliance herewith by Fiskars shall be deemed to constitute compliance  
14 with Proposition 65 with regard to warnings about exposure to Lead in any Covered Products,  
15 regardless of when such Covered Products are sold, and also shall constitute a conclusive  
16 determination that no Proposition 65 warning for Lead is required for Crystalline.

17 7.9 Modification: This Consent Judgment may be modified upon written stipulation  
18 by Plaintiff and Fiskars, subject to approval by the Court via a noticed motion. Either Party or  
19 the Attorney General also may seek modification of this Consent Judgment, subject to approval  
20 by the Court via noticed motion, as provided by law for good cause shown. Any stipulation or  
21 motion to modify this Consent Judgment shall include notice and service of said stipulation  
22 and/or motion on the Office of the Attorney General and the Parties.

23  
24  
25 [SIGNATURES ON NEXT PAGE]  
26  
27  
28

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

IT IS SO STIPULATED:

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

KLAMATH ENVIRONMENTAL LAW CEN

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

William Verick

MATEEL ENVIRONMENTAL  
JUSTICE FOUNDATION

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

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

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

Title: \_\_\_\_\_

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

# EXHIBIT A

1 ROBERT L. FALK (BAR NO. 142007)  
AARON P. AVILA (BAR NO. 211722)  
2 MORRISON & FOERSTER LLP  
425 Market Street  
3 San Francisco, California 94105-2482  
Telephone: (415) 268-7000

4 Lead Attorneys for Defendants

ENDORSED  
FILED  
San Francisco County Superior Court

AUG 23 2001

GOREN PARK-LLI, Clerk  
BY: \_\_\_\_\_  
Deputy Clerk

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN FRANCISCO

11 JANET C. MANGINI, on behalf of the general  
12 public,

13 Plaintiff,

14 v.

15 ACTION INDUSTRIES, INC.; ACTION  
INTERNATIONAL, LTD.; AEGIS  
16 ENTERPRISE, INC. d/b/a OFNAH TRADING  
CO.; ALEXANDER INDUSTRIES CORP.;  
17 ALEXANDER INDUSTRIES LTD.;  
AMERICAN COMMERCIAL  
INCORPORATED; AMERICAN CUT  
18 CRYSTAL CORP.; ANCHOR HOCKING  
GLASS CORP. (a Member of the Newell  
19 Group); ANNA HUTTE GmbH  
KRISTALLGLASFABRIK; AVON  
20 PRODUCTS, INC.; BACCARAT, INC.;  
BADASH, JACK INC.; BEYER & CO. GmbH  
21 KRISTAUGLASFABRIKEN; BLOCK CHINA  
CORPORATION; BORMIOLI ROCCO GLASS  
22 CO., INC.; BUFFALO CHINA, INC.;  
BUNRATTY CRYSTAL LTD.; C.A.L.P. SpA;  
23 CARTIER, INCORPORATED; CAVAN  
CRYSTAL GROUP LTD.; CAVAN IRISH  
24 CRYSTAL LTD; CESKA, INC.; CFC DAUM  
INC.; CFC DAUM ITALIA SpA; CFC DAUM  
25 PTL LTD; CLAUS JOSEPH RIEDEL,  
TIROLER GLASSHUTTE Ges.M.G.H.;  
26 COLLE SRL; COLONY (a Division of  
Lancaster Colony Corp.); COMPAGNIE des  
27 CRISTALLERIES de BACCARAT;  
COMPAGNIE des CRISTALLERIES de SAINT  
28 LOUIS; COMPAGNIE FRANCAISE du

(Consolidated Matters)  
Nos. 932724, 931884, 938173

**[PROPOSED] ORDER ENTERING  
MODIFIED CONSENT JUDGMENT**

Hearing Date: August 23, 2001  
Time: 9:30 a.m.  
Dept.: 302  
Judge: A. James Robertson, II  
Date Action Filed: May 30, 1991  
Trial Date: N/A

[Proposed] Order Entering Modified Consent Judgment

sf-1138904

AA00062

Document received by the CA 1st District Court of Appeal.

1 CRISTAL-DAUM; CRISA CORPORATION;  
2 CRISAL-CRISTAIS DE ALCOBACA, S.A.;  
3 CRISTALLERIE ARTISTICA LA PIANA SpA;  
4 CRISTALLERIES DE LORRAINE; CRYSTAL  
5 CLEAR INDUSTRIES; CRYSTAL DESIGNS  
6 OF TIPPERARY, LTD.; CRYSTAL  
7 GIFTWARE INC.; DANSK INTERNATIONAL  
8 DESIGNS, LTD.; DARTINGTON CRYSTAL  
9 LIMITED; DAUM BOUTIQUE; DESIGN  
10 GUILD; DEVON CRYSTAL LIMITED;  
11 DINNERWARE PLUS, (CA) INC.; D. J.  
12 TABLEWARE, INC.; DONEGAL CRYSTAL  
13 USA INC.; DUBLIN CRYSTAL GLASS CO.  
14 (IRELAND) LIMITED; THE EDINBURGH  
15 CRYSTAL GLASS COMPANY LTD.; ESSEX  
16 MARKETING INC.; EUPORT, INC.; 5TH  
17 (FIFTH) AVENUE CRYSTAL LTD; F.X.  
18 NACHTMANN BLEIKRISTALLWERKE  
19 GmbH; GALLO DESIGN GmbH; GALWAY  
20 CRYSTAL US, INC.; GLASSEXPOT CO.,  
21 LTD.; GLASWERKE WARMENSTEINACH;  
22 GODINGER INTERNATIONAL INC.;  
23 GODINGER SILVER ART, LTD.; GOEBEL  
24 ART GmbH; GOEBEL UNITED STATES (a  
25 Division of Goebel Art GmbH); GOLD LEAF  
26 TRADING INC.; GORHAM, INC.;  
27 HOFBAUER BLEIKRISTALL; HOYA  
28 CORPORATION-CRYSTAL DIVISION;  
HOYA CRYSTAL USA; IMPERIAL  
CRYSTALS & CHINA CO., INC.; IMPORT  
ASSOCIATES (a Division of Imtrac Industries,  
Inc.); IMPORT ASSOCIATES, INC.;  
IMPORTS BY ASTRAL, INC.; IMTRAC  
INDUSTRIES, INC.; INN CRYSTAL GLASS  
GmbH; INN CRYSTAL VERTRIEBSQES &  
CO. GmbH; JACQUES JUGEAT, INC.; JONAL  
CRYSTAL LTD.; KAGAMI CRYSTAL CO.,  
LTD.; K&M MOSTNY, INC.; KENWOOD  
SILVER COMPANY, INC.; KILLYBEGS  
CRYSTAL, LTD.; KOSTA BODA USA, LTD.;  
KRISTALLGLASFABRIK SPIEGELAU  
GmbH; LALIQUE; LALIQUE S.A.;  
LANCASTER COLONY CORPORATION;  
LENOX, INCORPORATED; M. LEUPOLD  
GmbH; LIBBEY GLASS, INC.; LOUISE  
GLASS COMPANY, INC.; MANUFACTURE  
DE CRISTAUX DU VAL SAINT LAMBERT  
SA/NU; MAXWELL CRYSTAL, INC.;  
MIKASA, INC.; MILLER IMPORT CORP.;  
MILLER ROGASKA, CRYSTAL; MILLER-  
ROGASKA INC.; MOSTNY, INC.;  
NACHTMANN U.S.A., INC.; NANCY  
CALHCUN INC.; NEUWIRTH CO. INC.;  
NEWELL COMPANY; NORITAKE CO., INC.  
(USA); NORITAKE CO., LIMITED (JAPAN);

Document received by the CA 1st District Court of Appeal.

1 ONEIDA DISTRIBUTION SERVICES, INC.;  
2 ONEIDA FACTORY STORES; ONEIDA  
3 FOOD SERVICE DIVISION; ONEIDA  
4 INTERNATIONAL, INC.; ONEIDA LTD.;  
5 ONEIDA SAVINGS PLAN; ONEIDA  
6 SILVERSMITHS DIVISION; ORREFORS,  
7 INC.; PASABAHCE; PASABAHCE TICARET  
8 LIMITED SIRKETI; PITMAN-DREITZER;  
9 POLO RALPH LAUREN CORPORATION;  
10 PRINCESS HOUSE, INC.; RCR, INC.;  
11 ROGASKA CRYSTAL BY MILLER  
12 ROGASKA; ROSENTHAL NORTH  
13 AMERICA; ROSENTHAL USA LIMITED;  
14 ROYAL BRIERLEY; ROYAL BRIERLEY  
15 CRYSTAL INC.; ROYAL BRIERLEY  
16 CRISTAL LTD.; ROYAL CRYSTAL ROCK,  
17 INC.; ROYAL DOULTON USA INC.; ROYAL  
18 MONARCH, LTD.; RUSSIAN AMERICAN  
19 COMMERCIAL CORP.; SAINT LOUIS  
20 CRISTAL DE FRANCE, INC.; SANT'  
21 ANDREA S.r.l.; SASAKI GLASS CO. LTD.;  
22 SASAKI, INC.; SAXONY, INC.; SCHOTT  
23 CORPORATION; SCHOTT-ZWIESEL  
24 GLASS, INC.; SCHOTT-ZWIESEL-  
25 GLASWERKE AG; SCULPTURED CRYSTAL  
(IRELAND) LTD.; SOCIETE NOUVELLE  
DES CRISTALLERIES DE LORRAINE;  
STEKLARNA BORIS KIDRIC ROGASKA  
SLATINA SLOVENIJA; ST. GEORGE  
CRYSTAL LTD.; STUART & SONS  
LIMITED; STYLESETTERS; SULLIVAN  
INC.; SVEND JENSEN OF DENMARK, INC.;  
TABLEWARE & GIFTS, INC.; TAMCON  
AND COMPANY; TAMCON INC.; TIFFANY  
AND COMPANY; THE LIGHTERS; THE LS  
COLLECTION; TOSCANY CLASSICS LTD.;  
TUDOR CRYSTAL LIMITED; TYRONE  
CRYSTAL LIMITED; ULLMANNGLASS;  
U.S.T.I., INCORPORATED; VAL SAINT  
LAMBERT USA, INC.; VERWALTUNGS  
GmbH; VILLEROY & BOCH AG;  
VILLEROY & BOCH S.a.r.l.; VILLEROY &  
BOCH TABLEWARE LTD.; VITROCRISA  
KRISTAL S.A. DE C.V.; WATERFORD  
WEDGWOOD P.L.C. (and its subsidiaries and  
affiliates); WMF/HUTSCHENREUTHER  
PARTNERSHIP USA (d/b/a WMF  
HUTSCHENREUTHER USA),

Defendants.



1 **MODIFIED CONSENT JUDGMENT**

2 **I. INTRODUCTION**

3 1. On May 30, 1991, Plaintiff Janet C. Mangini (hereinafter, "Plaintiff") filed  
4 a Complaint for Damages and Injunctive Relief (No. 932724, hereinafter, the "Mangini II  
5 Complaint") in this court (hereinafter, "Court"), naming BACCARAT, INC.; LALIQUE;  
6 GALWAY IRISH CRYSTAL U.S.A., INC.; JJF MARTEL; WATERFORD  
7 WEDGEWOOD; WATERFORD WEDGEWOOD RETAIL, INC.; ORREFORS;  
8 MACY'S CALIFORNIA, INC.; SHREVE & CO.; GUMPS; and DOES 1 through 200 as  
9 defendants (hereinafter "Defendants").

10 2. Plaintiff previously filed, and subsequently amended, two additional  
11 complaints in this Court (respectively, Nos. 931884 and 938173, hereinafter, the  
12 "Mangini I and Mangini III Amended Complaints") against some or all of the  
13 Defendants, as well as against HOYA CRYSTAL, KOSTA BODA, and SAKS &  
14 COMPANY.

15 3. Prior to filing this Consent Judgment, Plaintiff amended the Mangini II  
16 Complaint to include additional named defendants and legal theories. Upon further  
17 motion, this Court entered an order allowing the amended Mangini II Complaint to be  
18 consolidated with the Mangini I and III Amended Complaints for the purposes of this  
19 Consent Judgment. (The amended Mangini II Complaint and the Mangini I and III  
20 Amended Complaints are hereinafter referred to as the "Consolidated Complaints" and  
21 the defendants named in the Consolidated Complaints are hereinafter referred to as the  
22 "Settling Defendants".)

23 4. The Settling Defendants are deemed to have appeared in this action and  
24 are beneficiaries of this Consent Judgment. The names of the Settling Defendants to  
25 which the modifications of this Consent Judgment proposed in July 2001 apply appear on  
26 Exhibit 1 hereto and shall be deemed to include their successors and assigns, all of whom  
27 shall be deemed to have intervened and have been joined in the Consolidated Complaints  
28 pursuant to sections of the Code of Civil Procedure 387 and 379.

1           5.       Those Defendants named in the Mangini II Complaint and/or in the  
2 Mangini I and III Amended Complaints, but not in the Consolidated Complaints are not  
3 appearing in this action, but nevertheless may be beneficiaries of the Consent Judgment  
4 pursuant to Section V herein.

5           6.       The Consolidated Complaints are based on allegations that the Settling  
6 Defendants violated certain provisions of Cal. Business and Professions Code §§ 17200  
7 et seq. (hereinafter, "Unfair Competition Act") and the Safe Drinking Water and Toxic  
8 Enforcement Act of 1986, Cal. Health & Safety Code §§ 25249.6 et seq. (hereinafter,  
9 "Proposition 65"), by knowingly exposing individuals in the State of California to lead  
10 through the manufacture, distribution, and sale of crystal products containing lead used  
11 with food or beverages (hereinafter, "Leaded Crystal Products"), including, among  
12 others, certain decanters, glasses, and other serveware, without first providing clear and  
13 reasonable warnings to persons who could potentially be exposed to lead through the use  
14 of such products.

15          7.       Since the filing of the Mangini I Complaint, the Settling Defendants have  
16 implemented a system which is intended to provide potential purchasers of Leaded  
17 Crystal Products with warnings pursuant to Proposition 65. The language and format of  
18 the warnings were discussed by representatives of the Settling Defendants with the  
19 Attorney General's Office prior to their implementation. Since the entry of this Consent  
20 Judgment, the Settling Defendants have also reviewed the language, format, and  
21 placement of the warnings originally required by this Consent Judgment with the  
22 Attorney General's office on several occasions, including subsequent to the following: 1)  
23 the effective date that Proposition 65 warnings became required for exposures to lead  
24 with respect to its listing as a carcinogen under 22 Cal. Code Regs. section 12000, and 2)  
25 the receipt by certain Settling Defendants and Subsidiary Settling Parties (as defined in  
26 Paragraph 31 below) of 60-day notices issued pursuant to Health and Safety Code section  
27 25249.7(d) alleging that such notice recipients had failed to comply with Proposition 65's  
28 warning requirements and the terms of the Consent Judgment with respect to exposures

1 to lead from Leaded Crystal Products. The modified warning requirements appearing in  
2 Section II below reflect the outcome of these discussions and have been approved of by  
3 the Attorney General's office (see Exhibit 2).

4 8. For purposes of this Consent Judgment only, Plaintiff and the Settling  
5 Defendants stipulate that this Court has jurisdiction over the allegations of violations  
6 contained in the Consolidated Complaints and personal jurisdiction over the Settling  
7 Defendants as to the acts alleged in the Consolidated Complaints, that venue is proper in  
8 the City and County of San Francisco, and that this Court has jurisdiction to enter this  
9 Consent Judgment as a full and final resolution of the allegations contained in the  
10 Consolidated Complaints and any and all causes of action that may have been or were  
11 asserted therein.

12 9. Plaintiff and the Settling Defendants enter into this Consent Judgment to  
13 resolve the disputed claims of the Consolidated Complaints and all matters raised by the  
14 facts alleged therein or otherwise implicated by exposures to lead in Leaded Crystal  
15 Products, to avoid prolonged litigation, and to insure that the objectives of Proposition 65  
16 and the Unfair Competition Act are expeditiously carried out in furtherance of the public  
17 interest. The Modification of this Consent Judgment moved for by Settling Defendants in  
18 July 2001 addresses certain developments that have transpired following the entry of the  
19 Consent Judgment (such as the entrance of new companies into the business of  
20 manufacturing, distributing, selling and/or using Leaded Crystal Products; lessons  
21 learned regarding the distribution, placement, and viewing of warning signs; the advent  
22 of sales via the Internet; etc.) and also serves to ensure that the objectives of  
23 Proposition 65 and the Unfair Competition Act will continue to be expeditiously carried  
24 out in furtherance of the public interest.

25 10. By execution of this Order, the Settling Defendants do not admit any  
26 violations of Proposition 65, the Unfair Competition Act, or other statutes or causes of  
27 action that may apply to the facts alleged in the Consolidated Complaints. Nothing in  
28 this Consent Judgment shall be construed as an admission by the Settling Defendants of

any fact, issue of law or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by the Settling Defendants of any fact, issue of law or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, remedy or defense the Settling Defendants may have in any other or future legal proceeding. However, this Paragraph shall not diminish or otherwise affect the obligations, responsibilities and duties of the Settling Defendants under this Consent Judgment.

11. The agreement reflected in this Consent Judgment has been reviewed and approved of by the California Attorney General in a letter dated April 2, 1993. The Modifications to this Consent Judgment moved for in July 2001 have also been submitted to and reviewed by the California Attorney General, who has approved of the Modifications to the Warning Program as described below (see Exhibit 2).

## II. WARNING PROGRAM/CONTINUING INJUNCTIVE RELIEF

12. Clear and reasonable warning that use of Leaded Crystal Products exposes persons to lead, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm, shall be provided by the Settling Defendants in the manner provided in Paragraphs 13, 15, and 17 below. Upon receiving the written agreement of the Attorney General's Office, a Settling Defendant may provide warnings in an alternative manner to the requirements of this Paragraph. No warnings shall be required pursuant to this Paragraph where a Settling Defendant has provided the Attorney General's Office with data demonstrating that there is no detectable leaching of lead from a Leaded Crystal Product at least sixty (60) days in advance of making such product available for sale in the State of California.

13. By no later than June 30, 1993, each Settling Defendant, or an entity acting on its behalf, shall mail to the central purchasing office for all distributors and retail stores with whom it transacts business for sale of Leaded Crystal Products in California: 1) at least five copies of the sign contained in Exhibit A (hereinafter, the "Warning Sign"), printed on 65-pound cover stock and 2) a letter explaining the warning

1 program and providing posting instructions. The Warning Sign shall be 8-1/2" by 11" in  
2 size and shall have the exact content, form, and print style as Exhibit A. The letter and  
3 warning instructions referred to in this Paragraph shall contain the text shown in  
4 Exhibit B, and shall contain no further information or statements without the advance  
5 written approval of the California Attorney General's Office. Beginning in 2001, the  
6 Warning Signs and posting instructions contained in Exhibits 3 and 4 may be used by  
7 sellers of Leaded Crystal Products in California in lieu of those contained in Exhibits A  
8 and B. The size of this Warning Sign may vary between 4 x 6 inches and 8 x 10 inches  
9 as described in the posting instructions contained in Paragraph 14 and Exhibit 4 below.  
10 The exact content of the language appearing on the Warning Sign shown on Exhibit 3  
11 must be employed unless: (a) the seller does not offer for sale in stores located in  
12 California, any of the goods appearing in the asterisk-marked footnoted list of  
13 exemptions (in which case it may, at its option, omit the footnote), or (b) the California  
14 Attorney General's office has otherwise provided written authorization allowing for  
15 variance. Notwithstanding the foregoing, minor variances concerning the general form  
16 and print style used for the Warning Sign may occur, provided that the variance does not  
17 materially alter the general layout or overall conspicuousness or legibility of the Warning  
18 Sign. Beginning no later than September 1, 2001, Settling Defendants or an entity acting  
19 on their behalf, shall, provide at least one copy each of the Warning Sign contained in  
20 Exhibit 3 and the posting instructions contained on Exhibit 4, free of charge, to the  
21 central purchasing office (or other designated representative) of each person with whom  
22 they then, or at any time in the future begin: 1) to do business and 2) can reasonably  
23 foresee the likelihood of selling Leaded Crystal Products in California based upon the  
24 acquisition of knowledge (if any) concerning the location to which the Leaded Crystal  
25 Products will be shipped and the location of the retail outlets at which the Leaded Crystal  
26 Products are most likely to be sold ("In-State Distributors and Retailers"). Thereafter,  
27 Settling Defendants or an entity acting on their behalf, shall provide such In-State  
28 Distributors and Retailers with such additional copies of the Warning Sign and posting

1 instructions contained in Exhibits 3 and 4 as these In-State Distributors and Retailers may  
2 reasonably request. Beginning no later than September 1, 2002, Settling Defendants or  
3 an entity acting on their behalf, shall also, at least annually, provide such In-State  
4 Distributors and Retailers, free of charge, with a written reminder in the form of Exhibit 5  
5 (or its reasonable equivalent) of the need for compliance with warning requirements  
6 defined by this Consent Judgment (as modified). Settling Defendants, or an entity acting  
7 on their behalf, may choose to supplement any the warning materials required to be  
8 disseminated pursuant to this paragraph with an overall summary describing the  
9 Proposition 65 warning program for Leaded Crystal Products; unless otherwise approved  
10 in advance by the California Attorney General's office, such summary shall be in the  
11 form shown on Exhibit 6 (or its reasonable equivalent).

12 14. Warning Signs shall be placed in each California retail establishment in  
13 which any of the Settling Defendants' Leaded Crystal Products are sold by no later than  
14 July 31, 1993. Where a retail establishment sells only leaded crystal products that do not  
15 require a warning, it is not required to post the Warning Sign. Warning Signs shall not be  
16 covered or obscured, and shall be placed and displayed in a manner rendering them likely  
17 to be read and understood by an ordinary individual under customary conditions of  
18 purchase. Specifically, unless otherwise approved in advance by the California Attorney  
19 General, such signs shall be placed as follows:

20 a. Department stores or other stores with separate check-out for  
21 tableware department: For a store selling Leaded Crystal Products in a physically  
22 separate department or section, which contains cash registers within such department or  
23 section that are used primarily to purchase items sold in that department or section, signs  
24 shall be placed at each cash register in that section or department, and at a minimum of  
25 two additional locations where Leaded Crystal Products are displayed within the section  
26 or department. Alternatively, the warning may be provided through: (a) a 4-inch by 6-  
27 inch warning sign with the language in Exhibit 3 at, on, or adjacent to each check-out  
28 counter, sales register, cash stand, or cash wrap in that section or department, or (b) on a

shelf where the Leaded Crystal Product is displayed; or (c) as specified in subparagraph 14.b (as modified) below.

b. Large stores without a separate check-out for tableware department: any store that sells Leaded Crystal Products and has more than 7,500 square feet of floor space and that uses one or more check-out stands for all merchandise purchased at the store, a single sign shall be posted at each location where Leaded Crystal Products are displayed, plus as many additional signs as are necessary to assure that any potential purchaser of tableware would be reasonably likely to see a Warning Sign. Alternatively, the warning may be provided either by: (a) posting an 8-inch by 10-inch warning sign with the language shown in Exhibit 3 at each location where Leaded Crystal Products are or may be displayed, in a manner such that any potential purchaser of Covered Products would be reasonably likely to see a warning sign, and the warning signs may be free-standing, placed on the wall, hung, or displayed in any manner; or (b) posting a 4-inch by 6-inch warning sign with the language shown in Exhibit 3 on a shelf where the Leaded Crystal Product is displayed.

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

15. By no later than June 30, 1993, each Settling Defendant, or an entity acting on its behalf, shall mail to the central purchasing office for each company which it knows or has reason to know sells such a Settling Defendant's Leaded Crystal Products to residents of California by mail: 1) a copy of the Warning Sign and 2) a letter explaining the warning program and providing instructions for distribution of the warnings to California consumers. The letter and instructions referred to in this Paragraph shall contain the text shown in Exhibit C and shall contain no further information or statements without the advance written approval of the California Attorney General's Office. Beginning in 2001, the instructions contained in Exhibit 7 may be used by mail order,



1 Internet, and other direct marketers of Leaded Crystal Products in lieu of those contained  
2 in Exhibit C. Beginning no later than September 1, 2001, Settling Defendants or an  
3 entity acting on their behalf, shall provide at least one copy of the instructions contained  
4 on Exhibit 7, free of charge, to the central purchasing office (or other designated  
5 representative) of each person with whom they then, or at any time in the future begin: 1)  
6 to do business and 2) can reasonably foresee the likelihood of selling Leaded Crystal  
7 Products to customers located in California through direct marketing vehicles such as  
8 mail order or Internet sales based upon: a) authorizations given to the seller allowing  
9 them to offer such Leaded Crystal Products for sale to customers located in California, b)  
10 the geographical location of the seller within the United States, and c) extent of  
11 knowledge (if any) that the seller has in fact previously shipped the supplied Leaded  
12 Crystal Products to customers located in California ("Mail Order/Internet Direct  
13 Marketers"). Thereafter, Settling Defendants or an entity acting on their behalf, shall  
14 provide such Mail Order/Internet Direct Marketers with such additional copies of the  
15 instructions contained in Exhibit 7 as these Mail Order/Internet Direct Marketers may  
16 reasonably request. Beginning no later than September 1, 2002, Settling Defendants or  
17 an entity acting on their behalf, shall also, at least annually, provide such Covered Mail  
18 Order/Internet Direct Marketers with a written reminder in the form of Exhibit 5 (or its  
19 reasonable equivalent) of the need for compliance with warning requirements defined by  
20 this Consent Judgment (as modified). Settling Defendants, or an entity acting on their  
21 behalf, may choose to supplement any the warning materials required to be disseminated  
22 pursuant to this paragraph with an overall summary describing the Proposition 65  
23 warning program for Leaded Crystal Products; unless otherwise approved in advance by  
24 the California Attorney General's office, such summary shall be in the form shown on  
25 Exhibit 6 (or its reasonable equivalent).

26 16. Where a Settling Defendant's Leaded Crystal Products are available for  
27 sale by mail order/Internet Direct Marketers to residents of the State of California, clear  
28 and reasonable warning shall be provided by no later than July 31, 1993 by including a



1 warning, either in the mail order catalog or brochure/Internet Website or with the Leaded  
2 Crystal Product when it is shipped to California customers as follows:

3           a.       Mail Order Catalog or Brochure/Internet Website. The following  
4 warning message shall be stated within the catalog or brochure, on the inside front cover,  
5 on the same page as any order form, or on the same page as the price, in at least 12 point  
6 type: "Prop 65 WARNING: Use of the leaded crystal tableware for sale in this catalog  
7 or brochure will expose you to lead, a chemical known to the State of California to cause  
8 birth defects or other reproductive harm." If not all of the items for sale in the catalog or  
9 brochure require a warning, the following shall be used as an alternative to the preceding  
10 warning message: "Prop 65 WARNING: Use of the following brands of leaded crystal  
11 tableware for sale in this catalog or brochure will expose you to lead, a chemical known  
12 to the State of California to cause birth defects or other reproductive harm: [Insert  
13 Listing of Brand Names and Exceptions]." Beginning in 2001, the warning language  
14 described in this paragraph may also be used by Internet sellers of Leaded Crystal  
15 Products sold to California residents, provided that the warning message shall be  
16 displayed (or, upon the internet site user's identification that they are either a California  
17 resident or that they are placing an order to be provided to a California resident,  
18 automatically appear) either: (a) on the same page on which a Leaded Crystal Product is  
19 displayed, (b) on the same page as any order form for a Leaded Crystal Product, or (c) on  
20 the same page as the price for any Leaded Crystal Product.

21           b.       Package Insert or Label. Alternatively, a warning may be provided  
22 with the Leaded Crystal Products when they are shipped by Mail Order/Internet Direct  
23 Marketers, by (a) inserting a card or slip of paper measuring at least 4" by 6" in a  
24 shipping carton, (b) affixing a pressure-sensitive label measuring at least standard  
25 business-card size on the face of the shipping carton, or (c) printing the warning on the  
26 packing slip or customer invoice identifying the Leaded Crystal Product in lettering of  
27 the same size as the description of the Leaded Crystal Product. The warning shall read as  
28 follows: "Prop 65 WARNING: Use of this product will expose you to lead, a chemical

1 known to the State of California to cause birth defects or other reproductive harm. You  
2 may return this product for a full refund within 30 days of receipt, if you wish. You may  
3 also obtain a list of each brand of leaded crystal tableware for which the same warning is  
4 given." Beginning in 2001, the quoted sentence immediately preceding this sentence  
5 may be deleted from the required language.

6 17. By no later than June 30, 1993, each Settling Defendant, or an entity  
7 acting on its behalf, shall mail to the central purchasing office for all restaurant suppliers  
8 or each restaurant or other food service establishment with whom it transacts business for  
9 the commercial use of Leaded Crystal Products in California: 1) at least two copies of the  
10 warning sign contained in Exhibit D, printed on 65-pound cover stock and 2) a letter  
11 explaining the warning program and providing posting instructions. The warning sign  
12 referred to in this paragraph shall be 8-1/2" by 11" in size and shall have the exact  
13 content, form, and print style as Exhibit D. The letter and instructions referred to in this  
14 Paragraph shall contain the text shown in Exhibit E and shall contain no further  
15 information or statements without the advance written approval of the California  
16 Attorney General's Office. Beginning in 2001, the Warning Signs contained in Exhibit 8  
17 may be used by restaurants, wineries, and other food service establishments in California  
18 in lieu of that contained in Exhibits D. For wineries, the size of the Warning Sign may  
19 vary between 4 x 6 inches and 8 x 10 inches in a manner consistent with that described in  
20 the posting instructions contained in Exhibit 9. Beginning no later than September 1,  
21 2001, Settling Defendants or an entity acting on their behalf, shall, provide at least one  
22 copy each of the Warning Sign contained in Exhibit 8 and the posting instructions  
23 contained in either Exhibit 9 (for ultimate use at a winery) or Exhibit 10 (for ultimate use  
24 at a restaurant or food service establishment other than at a winery) to the central  
25 purchasing office (or other designated representative) of each person with whom they  
26 then, or at any time in the future begin: 1) to do business and 2) can reasonably foresee  
27 the likelihood of selling or using Leaded Crystal Products at a restaurant, winery or other  
28 food service establishment in California based upon the acquisition of knowledge (if any)

1 concerning the location to which the Leaded Crystal Products will be shipped and the  
2 location of the restaurant/winery/food service outlets at which the Leaded Crystal  
3 Products are most likely to be sold or used ("California Food Service Distributors and  
4 Establishments"). Thereafter, Settling Defendants or an entity acting on their behalf,  
5 shall provide such California Food Service Distributors and Establishments with such  
6 additional copies of the Warning Sign and posting instructions contained in Exhibits 8, 9,  
7 and/or 10, as these California Food Service Distributors and Establishments may  
8 reasonably request. Beginning no later than September 1, 2002, Settling Defendants, or  
9 an entity acting on their behalf, shall also, at least annually, provide such California Food  
10 Service Distributors and Establishments, free of charge, with a written reminder in the  
11 form of Exhibit 5 (or its reasonable equivalent) of the need for compliance with warning  
12 requirements defined by this Consent Judgment (as modified). Settling Defendants, or an  
13 entity acting on their behalf, may choose to supplement any the warning materials  
14 required to be disseminated pursuant to this paragraph with an overall summary  
15 describing the Proposition 65 warning program for Leaded Crystal Products; unless  
16 otherwise approved in advance by the California Attorney General's office, such  
17 summary shall be in the form shown on Exhibit 6 (or its reasonable equivalent).

18       18.     Restaurants, hotels, and other food service establishments in California  
19 shall provide clear and reasonable warning, whenever a Settling Defendant's Leaded  
20 Crystal Products are used for service of food consumed by their customers, by posting an  
21 8-1/2" by 11" sign with the exact content, form, and print style as Exhibit D by no later  
22 than July 31, 1993. The sign shall be printed on at least 65-pound cover stock.  
23 Beginning in 2001, the Warning Sign contained in Exhibit 8 may be used by restaurants,  
24 other food service establishments, or wineries in California in lieu of those contained in  
25 Exhibits D and, for wineries, the size of the Warning Signs may vary between 4 x 6  
26 inches and 8 x 10 inches in a manner consistent with that described in the posting  
27 instructions contained in Exhibit 9.

28       19.     A Settling Defendant that has complied with the terms of Paragraphs 13,

1 15, and 17 above (including as modified) shall not be found to have violated this Consent  
2 Judgment where a retail store, distributor, mail order supplier, Internet seller, restaurant  
3 supplier, restaurant, winery, or any other person required to provide Proposition 65  
4 warnings for Leaded Crystal Products (including another Settling Defendant) fails to  
5 provide such warnings.

### 6 III. SETTLEMENT CONSIDERATION, FEES, AND COSTS

7 20. Within sixty (60) days of entry of this Consent Judgment, the Settling  
8 Defendants shall pay the sum of \$362,500.00 to the University of California  
9 San Francisco School of Pharmacy, San Francisco, California, a tax-exempt, educational  
10 organization under Section 501(c)(3) of the Internal Revenue Code.

11 21. The funds paid pursuant to Paragraph 20 shall be used in support of the  
12 School of Pharmacy's lead research and lead-related programs as specified in Exhibit F.

13 22. Payment shall be made by certified check delivered to the School of  
14 Pharmacy, University of California -- San Francisco, San Francisco, California 94143-  
15 0446 (Attn. George L. Kenyon, Dean).

16 23. Within sixty (60) days of entry of this Consent Judgment, the Settling  
17 Defendants shall also pay the sum of \$60,000 to the California Public Health Foundation,  
18 Berkeley, California, a tax-exempt, charitable organization under Section 501(c)(3) of the  
19 Internal Revenue Code.

20 24. The funds paid pursuant to Paragraph 23 shall be used for scientific,  
21 educational, and research purposes relating to educating the public, health professionals,  
22 and others about the risks of exposure to lead. Specific decisions as to the education,  
23 prevention, and research program will be made by the California Public Health  
24 Foundation in consultation with experts in public health, health education, and risk  
25 communication, including prior consultation with a representative or designee of the  
26 Settling Defendants.

27 25. Payment shall be made by certified check delivered to the California  
28 Public Health Foundation, 2001 Addison Street, Suite 210, Berkeley, California 94704

(Attn. James B. Simpson, General Counsel).

26. Within 60 days of entry of this Consent Judgment, the Settling Defendants shall also pay the sum of \$322,500.00 in attorney fees and \$50,000 in costs to Plaintiff's attorneys.

27. Payment shall be tendered jointly to Bushnell, Caplan & Fielding and Milberg Weiss Bershad Specthrie & Lerach and mailed to the attention of Alan M. Caplan, Esq., Bushnell, Caplan & Fielding, 901 Market Street, Suite 230, San Francisco, California 94103.

#### IV. ENTRY OF JUDGMENT

28. This Consent Judgment shall be effective only upon the determination by this Court, made on motion and with the opportunity for hearing, that this is a good faith settlement in the public interest. None of the terms of this Consent Judgment will be binding unless and until this Consent Judgment is entered. Likewise the Modification to this Consent Judgment moved for in July 2001 shall be effective only upon the determination by this Court, made on motion and with the opportunity for hearing, that, this Consent Judgment, as modified, remains a good faith settlement in the public interest.

#### V. MATTERS COVERED BY THIS CONSENT JUDGMENT

29. This Consent Judgment is a full and final judgment and settlement applying to all Settling Defendants and all Subsidiary Settling Parties (as defined by Paragraph 31 below) for all claims, violations, actions, damages, costs, penalties or causes of action under Proposition 65, the Unfair Competition Act, and any other statutes and causes of action that may apply to the facts alleged by Plaintiff or otherwise may have arisen from any exposures to lead in Leaded Crystal Products which may have occurred up to the date on which warnings are required to be issued pursuant to Section II of this Consent Judgment, including all violations alleged in the Consolidated Complaints. However, this Consent Judgment does not in any way cover or resolve any claim alleged by the People of the State of California in People v. Baccarat, Inc., et al.,

1 S.F. Superior Court No. 932292 as to defendants named in the case as of March 24, 1993.  
2 Nevertheless, modifications to this Consent Judgment moved for subsequent to entry of  
3 judgment in People v. Baccarat, Inc., et al., S.F. Superior Court No. 932292 may be  
4 applied by defendants in People v. Baccarat, Inc., et al., S.F. Superior Court No. 932292  
5 to the same extent that such defendants are entitled to comply with this Consent  
6 Judgment as a means of complying with the judgments entered in People v. Baccarat,  
7 Inc., et al., S.F. Superior Court No. 932292.

8         30. Upon entry of this Consent Judgment, the Settling Defendants and  
9 Subsidiary Settling Parties (as defined by Paragraph 31 below) and the directors, officers,  
10 employees, agents, parents, affiliates, divisions, and subsidiaries, and the successors or  
11 assigns of any of them, are hereby released from all claims, violations, actions, damages,  
12 costs, penalties, or causes of action set forth in Paragraph 29 which may hereafter be  
13 asserted by Plaintiff or any other person, corporation, or other entity whatsoever claiming  
14 by, through, or in place of the Plaintiff. As to any claims, violations, actions, damages,  
15 costs, penalties, or causes of action which may arise or have arisen after the original date  
16 of entry of this Consent Judgment, compliance with those terms of Section II of this  
17 Consent Judgment applicable to a Settling Defendant or Subsidiary Settling Party  
18 (including as modified) shall be deemed to constitute that entity's full and complete  
19 compliance with Proposition 65 and the Unfair Competition Act with respect to the  
20 provision of warnings for lead in Leaded Crystal Products, provided, however, that no  
21 Settling Defendant or Subsidiary Settling Party (or the directors, officers, employees,  
22 agents, parents, affiliates, divisions, and subsidiaries, and the successors or assigns of any  
23 of them) shall be deemed to be in or have been in such compliance and released from  
24 future claims if it or an entity acting on its behalf had not, as of the date of the alleged  
25 violation, implemented the requirements applicable to them as set forth in Section II  
26 above (including as modified).

27         31. Subsidiary Settling Parties, as used herein, shall mean the manufacturers,  
28 distributors, wholesalers, retailers, mail order and Internet sellers, restaurant suppliers,

1 restaurants, wineries, and others who may be deemed responsible for exposures of  
2 persons to lead in Leaded Crystal Products manufactured or marketed by or acquired  
3 from a Settling Defendant. The releases from liability provided for by this Consent  
4 Judgment to such Subsidiary Settling Parties shall extend only to liability associated with  
5 exposures to Leaded Crystal Products manufactured or marketed by or acquired from one  
6 or more Settling Defendants and shall not extend to any liability associated with  
7 exposures to the products of any other party or entity.

#### 8 VI. ADDITIONAL ENFORCEMENT ACTIONS

9 32. By entering into this Consent Judgment, Plaintiff does not waive any right  
10 to take further enforcement action on matters not covered by Section V of this Consent  
11 Judgment (as modified).

12 33. Nothing in this Consent Judgment shall be construed as diminishing the  
13 Settling Defendants' continuing obligation to insure compliance with Proposition 65 with  
14 respect to the issuance of warnings for lead in Leaded Crystal Products as such  
15 compliance is defined in and by Section II of this Consent Judgment (as modified) with  
16 respect to the relevant obligations of that Settling Defendant.

#### 17 VII. ENFORCEMENT OF JUDGMENT

18 34. The terms and conditions contained in Section II herein (as modified) shall  
19 be enforceable only and exclusively by the California Attorney General's Office.

20 35. Plaintiff may, by motion or order to show cause before the Superior Court  
21 of the City and County of San Francisco, enforce the terms and conditions contained in  
22 Section III herein. In any action brought by Plaintiff to enforce this Consent Judgment,  
23 Plaintiff may seek whatever fines, costs, penalties or remedies are provided by law.

#### 24 VIII. MODIFICATION OF JUDGMENT

25 36. This Consent Judgment may be modified upon written approval of  
26 Plaintiff and Settling Defendants or upon motion of any party as provided by law for  
27 good cause shown.



IX. EXECUTION IN COUNTERPARTS

37. This Consent Judgment may be executed in one or more counterparts which taken together shall be deemed to constitute one and the same document.

IT IS SO ORDERED, ADJUDGED, AND DECREED.

DATED: 8-23-01

[Signature]  
JUDGE OF THE SUPERIOR COURT

Footnote: \* Exhibit G contains the Settling Defendants' individual executions.



## **EXHIBIT 3**

**(Exemplars of Updated In-Store Warning Signs)**

Document received by the CA 1st District Court of Appeal.

**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.

# **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.\***

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

**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.\*

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

# **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.**

## **EXHIBIT 4**

**(Updated In-Store Posting Instructions)**

Document received by the CA 1st District Court of Appeal.

**Retail Store Warning Instructions for Leaded Crystal**  
**(effective May 2001)**

In order to comply with the court-ordered warning program, retailers selling leaded crystal tableware (including glasses, decanters, plates, bowls and other food contact items, but not including leaded crystal items not used with food, such as vases, candlesticks, sculpture, etc.) must provide Proposition 65 warnings by posting signs at every retail outlet they own or principally operate in the State of California at which leaded crystal tableware is sold.<sup>1</sup> There are two basic signs – one that has a footnote noting that Baccarat decanters, flacons, stoppered pitchers, mustard and jam pots are exempt from the warning (Appendix 1) and one that does not (Appendix 2).

You may use the sign as is (*i.e.*, on heavy cardboard stock) or you may reprint it in another medium (*e.g.*, in the form of a decal or a plaque). The signs you post must contain the same language and format as the enclosed sign. You must also ensure that the signs are, at all times, posted where required, legible and in good condition

The type and size of sign and where you post them depend on the leaded crystal products you carry and the type of store you operate. There are three basic groups:

***A. Department Stores or Other Stores With a Separate Check-Out for Tableware***

If you sell leaded crystal tableware in a physically separate or distinct department or section which contains its own cash registers intended for purchase of items sold in that department or section, you have the option of (a) posting a 4-inch by 6-inch warning sign substantially similar to Appendix 1 (or Appendix 2 if none of the Baccarat products identified in the footnote in Appendix 1 are or may be sold at the store) at, on, or adjacent to each checkout counter, sales register, cash stand, or cash wrap in that section or department, or on the shelf where the leaded crystal is displayed; or (b) in the manner specified for "large stores without a separate checkout" below.

---

<sup>1</sup>The May 2001 Consent Judgments also allow a retailer to provide a Proposition 65 warning by labeling the crystal tableware article or its packaging, in lieu of using point-of-sale signs. The warning on the label must read "Consuming foods or beverages that have been kept or served in leaded crystal products exposes you to leaded, a chemical known to the State of California to cause birth defects or other reproductive harm." The warning must be affixed to the packaging, labeling, or the article itself in the condition the product is given to or chosen by the customer, and displayed in a size and manner that is likely to be read and understood by an ordinary individual under customary conditions of purchase.

***B. Large Stores Without A Separate Check-Out for Tableware***

If you have more than 7,500 square feet of floor space and use one or more checkout stands for all merchandise purchased at the store, you may either (a) post an 8-inch by 10-inch version of the warning sign attached as Appendix 1 (or Appendix 2 if none of the Baccarat products identified in the footnote in Appendix 1 are or may be sold at the store) at each location where leaded crystal tableware is or may be displayed (the signs may be free-standing, placed on the wall, hung, or displayed in any manner, so long as a potential purchaser would be reasonably likely to see it), or (b) post a 4-inch by 6-inch version of the warning sign on the shelf where leaded crystal tableware is displayed.

***C. Small Stores Without A Separate Check-Out For Tableware***

If you have 7,500 square feet of floor space or less and use one or more check-out stands for all merchandise purchased, you may either (a) post 4-inch by 6-inch signs at, on or adjacent to each check-out counter, sales register, cash stand or cash wrap in the store, or on the shelf where leaded crystal tableware is displayed, or (b) post an 8-inch by 10-inch sign at each location where leaded crystal tableware is or may be displayed (the signs may be free-standing, placed on the wall, hung, or displayed in any manner, so long as a potential purchaser would be reasonably likely to see it). You do not need to do both (a) and (b).<sup>2</sup>

---

<sup>2</sup>The May 2001 Consent Judgments also allow retailers who sell both leaded crystal and ceramic tableware (which is subject to a separate Proposition 65 warning program) to deliver point-of-sale warnings through the use of "hybrid" signs covering both products. If you would like additional information on this warning option, please contact your company's general counsel, your company's attorneys, or Michael R. Kershow, counsel to the International Crystal Federation and the Coalition for Safe Cerameware, at 202.342.8580.



## **EXHIBIT 5**

**(Exemplar of Annual Reminder)**

Document received by the CA 1st District Court of Appeal.

**MEMORANDUM**

**TO: ALL COMPANIES SELLING LEAD CRYSTAL TABLEWARE IN THE STATE OF CALIFORNIA**

**FROM: MICHAEL R. KERSHOW**  
*Counsel to the International Crystal Federation*

**RE: PROPOSITION 65 WARNINGS FOR LEAD CRYSTAL PRODUCTS SOLD IN CALIFORNIA**

---

This memorandum is being sent to you to remind you that under a series of court-approved Consent Judgments, the sale in California of virtually all lead crystal tableware products must be accompanied by specified warnings pursuant to that state's unique Safe Drinking Water and Toxic Enforcement Act of 1986 (better known as "Proposition 65").

The warning requirements apply to all retail stores located in California; to all "mail order" sales made to California residents (whether by mail, catalogue, telephone or electronically (e.g., via the Internet)); to restaurants in California that serve food or beverages in lead crystal tableware; and to California wineries that sell lead crystal tableware or use it for tastings. In addition, distributors of lead crystal tableware must pass on information about the warning requirement to their customers.

Failure to provide warnings as required could subject your company to significant monetary penalties.

If you have questions about the specifics of the warning program, you should contact your company's general counsel or attorneys, or you may contact me at 202.342.8580 or by e-mail at [mkershow@colliershannon.com](mailto:mkershow@colliershannon.com).

Document received by the CA 1st District Court of Appeal.

## **EXHIBIT 6**

**(Optional Overview of Warning Requirements)**

Document received by the CA 1st District Court of Appeal.

MEMORANDUM

June 6, 2001

TO: ALL COMPANIES SELLING LEAD CRYSTAL TABLEWARE IN THE STATE OF CALIFORNIA

FROM: MICHAEL R. KERSHOW  
*Counsel to the International Crystal Federation*

RE: PROPOSITION 65 WARNINGS FOR LEAD CRYSTAL PRODUCTS SOLD IN CALIFORNIA

As you probably are aware, in the early 1990s, manufacturers of lead crystal tableware products – that is, stemware, barware, decanters, bowls, dishes and other lead crystal products used for the consumption of food and beverages – agreed, in a series of court-approved Consent Judgments, to provide all purchasers of their products in California with warnings pursuant to that state's unique Safe Drinking Water and Toxic Enforcement Act of 1986 (better known as "Proposition 65"), which recognizes lead as potentially causing birth defects. Under these Consent Judgments, the manufacturers agreed to provide retailers in California with warning signs to be posted at designated points within stores. The Consent Judgments also required that warnings be provided in connection with "mail order" sales of crystal tableware to California residents and the use of crystal tableware in restaurants.

In May 2001, major retailers agreed to their own set of court-approved Consent Judgments that modify the original warning program in certain respects. As manufacturers and distributors of lead crystal, the members of my client, the International Crystal Federation, agreed separately to provide sellers of lead crystal tableware in California with notice of these new warning requirements; hence, this memorandum. It is important that you implement and maintain warnings in all of your California-based stores and in connection with any sales to California residents made via mail-order catalogs or the Internet, as specified below; your failure to do so could subject your company to significant monetary penalties.

The description of the new warning program set forth below is intended as a summary of the detailed warning program provided for in the May 2001 Consent Judgments. Obviously, the terms of those Consent Judgments are controlling. If you would like a copy of them or have questions about any element of the warning program, you should contact your company's general counsel or attorneys, or you may contact me at 202.342.8580 or by e-mail at [mkershow@colliershannon.com](mailto:mkershow@colliershannon.com). We would also be happy to supply you, free of charge, with copies of the "standard" point-of-sale warning sign prescribed by the agreement (see Appendix 1).

June 6, 2001

Page 2

### **IF YOU ARE A RETAILER**

If you are a retailer of any kind (and wherever based) and maintain retail outlets in California in which lead crystal tableware items are sold, you must provide a warning by posting one or more warning signs in each store. The size of the store or its main product lines do not affect the basic warning requirement; whether you operate a department or tableware specialty store and carry several full lines of lead crystal, or are instead a smaller shop selling wine, jewelry or gifts and carry only a few crystal tableware items, you must post the warning sign if you carry any brand of lead crystal. The required signs are enclosed as Appendices 1 and 2; which of these you post depends on whether you sell Baccarat decanters, flacons, stoppered pitchers, mustard and jam pots (which are exempt from the warning). Instructions for posting the sign are enclosed as Appendix 3.

Please note that the enclosed signs supersede any in use prior to May 2001. If you already are using warning signs in your stores in California, please replace them with the sign enclosed as Appendix 1 or 2 (as appropriate).

### **IF YOU SELL TO CALIFORNIA RESIDENTS BY "MAIL ORDER"**

If you sell lead crystal tableware products to residents of California by "mail order" – that is, in response to orders transmitted by mail, by telephone or electronically (e.g., through an Internet website) – you must provide a warning. The location of your company is irrelevant; if the customer is a resident of California, the required warning must be provided. Instructions for providing "mail order" warnings are attached as Appendix 4.

### **IF YOU ARE A RESTAURANT**

If you operate a restaurant or other eating establishment in the state of California and serve food or beverages in lead crystal tableware, you must provide a warning to your patrons by posting a sign where it will be seen by your customers before they consume food, such as near the main entrance, or near where people wait to be seated. The required sign is enclosed as Appendix 5. Instructions for posting the sign are enclosed as Appendix 6.

### **IF YOU ARE A WINERY**

If you are a California-based winery that sells or uses lead crystal tableware products (e.g., stemware or decanters) on your premises, you must post the warning sign attached as Appendix 5 (a) on or near the cash register(s) or service counter(s) where lead crystal tableware articles may be purchased by consumers and (b) in or at the entrance to any area where wine is poured in lead crystal glasses for tasting. Detailed instructions for posting the signs are enclosed as Appendix 7.

Document received by the CA 1st District Court of Appeal.

June 6, 2001

Page 3

**IF YOU ARE A DISTRIBUTOR**

If you are not yourself a retailer, "mail order" seller, restaurant, or winery meeting the criteria outlined above, but are a distributor of any brand of lead crystal tableware to retailers, "mail order" sellers, restaurants, or wineries (as described above), you must pass on the information contained in this memorandum and the relevant appendices to your customers. Failure to do so may subject you and your customers to liability under Proposition 65. You should send the appropriate materials to all of your customers, unless you are certain that a particular customer does not do business in California. Additionally, if you distribute to retail stores, you should include the instructions for "mail order" sellers (Appendix 4), as many retailers also engage in "mail order" sales.

Document received by the CA 1st District Court of Appeal.

## **EXHIBIT 7**

**(Updated Mail Order/Internet/Direct Marketer Warning Instructions)**

Document received by the CA 1st District Court of Appeal.

**Instructions For Providing Proposition 65 Warnings In Connection With "Mail Order" Sales Of Certain Leaded Crystal Tableware Products**  
**(effective May 2001)**

If you sell leaded crystal tableware products (including glasses, decanters, plates, bowls and other food contact items, but not including leaded crystal items not used with food, such as vases, candlesticks, sculpture, etc.) to residents of California by "mail order" – that is, in response to orders transmitted by mail, by telephone or electronically (e.g., through an Internet website) – you must provide a Proposition 65 warning to the customer.<sup>1</sup> The location of your company is irrelevant; if the customer is a resident of California, the required warning must be provided. The warning requirement applies to all leaded crystal tableware products, other than Baccarat decanters, flacons, stoppered pitchers, and mustard and jam jars.

**Warning in the Catalog or on the Website**

You may, if you wish, provide the Proposition 65 warning in your mail order catalog or on your Internet website. The warning must read:

**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.<sup>2</sup>**

If you choose to warn in your catalog or brochure, the warning message must appear, in the same size type as the surrounding, non-heading text, on either (a) the inside front cover, (b) the same page as any order form, or (c) the same page as the price.

If you choose to warn on your Internet website, the warning message shall be displayed (or, upon the Internet site user's identification that they are either a California resident or that they are placing an order to be provided to a California resident, automatically appear) either: (a) on the same page on which a leaded crystal tableware product (other than any of the exempt Baccarat products) is displayed, (b) on the same page as any order form for a leaded crystal tableware product, or (c) on the same page as the price for any leaded crystal tableware product.

---

<sup>1</sup> The May 2001 Consent Judgments also allow mail order sellers who sell both leaded crystal and ceramic tableware (which is subject to a separate Proposition 65 warning program) to deliver "hybrid" warnings covering both products. If you would like additional information on this warning option, please contact your company's general counsel, your company's attorneys, or Michael R. Kershaw, counsel to the International Crystal Federation and the Coalition for Safe Ceramicware, at 202.342.8580.

<sup>2</sup> If any of the exempt Baccarat items is sold in the catalog in addition to other leaded crystal tableware, a footnote must be placed at the end of the above warning, stating "This warning does not apply to Baccarat decanters, flacons, stoppered pitchers, mustard and jam pots."



### **Package Insert or Label Warnings**

If you do not provide the warning in your catalog or brochure or on your website, you must provide the warning at the time the merchandise is shipped to California purchasers. You may do this by (a) labeling the product or its packaging (e.g., with a pressure-sensitive sticker) in a size and manner that is likely to be read and understood by an ordinary individual under customary conditions of purchase,<sup>3</sup> (b) inserting a card or slip of paper measuring at least 4"x 6" in the shipping carton, or (c) printing the warning on the packing slip or customer invoice in lettering of the same size as the description of the item ordered. The warning must read as follows:

**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. You may return this product for a full refund within 30 days of receipt, if you wish.**

---

<sup>3</sup> If the warning notice is attached to the face of the shipping carton, it must be no smaller than a standard-size business card.

## **EXHIBIT 8**

**(Updated Restaurant and Winery Sign)**

Document received by the CA 1st District Court of Appeal.

# **PROP 65 WARNING**

## **LEADED CRYSTAL**

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

**PROP 65**  
**WARNING**

**LEADED CRYSTAL**

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

## **EXHIBIT 9**

**(Updated Winery Posting Instructions)**

Document received by the CA 1st District Court of Appeal.

**Instructions For Providing Proposition 65 Warnings**  
**In Connection With the Sale or Use of Certain Leaded Crystal Tableware Products in**  
**Wineries**  
**(effective May 2001)**

If you are a California-based winery that sells leaded crystal tableware articles (e.g., stemware and decanters) or uses such articles on the premises (e.g., at tastings, including associated give-away promotions), you must post the Proposition 65 warning sign attached as Appendix 5 as follows:

1. On or near the cash register(s) or service counter(s) where lead crystal tableware articles may be purchased by consumers. You may place an 8 ½ inch by 11 inch version of the sign *either* (a) on the customer-facing side of the principal cash register, (b) on the top or side of the principal service counter, or (c) on the customer-facing side of the wall behind the principal cash register or service counter. ). Any one of these locations is sufficient, so long as the sign is visible. If there are multiple cash registers or service counters at which lead crystal tableware articles are sold, the size of the sign may be reduced to 4 inches by 6 inches, *provided that* it is displayed at *all* such locations (*i.e.*, on each register or service counter).

***and***

2. In or at the entrance to any area where wine is poured in lead crystal glasses for tasting. You may place an 8 ½ inch by 11 inch version of the sign *either* (a) on the customer-facing side of the wall behind the bar at which wine is poured for tastings, or (b) on the entrance door to the tasting room or winery facility (assuming that lead crystal glasses are used for tastings held somewhere on the premises). Either of these locations is sufficient, so long as the sign is visible.

The display of warning signs as described under (1) and (2) above will be sufficient to constitute compliance for the entire winery, regardless of whether lead crystal is sometimes sold or used at multiple or a variety of locations on the premises.

Document received by the CA 1st District Court of Appeal.

## **EXHIBIT 10**

**(Updated Restaurant Posting Instructions)**

Document received by the CA 1st District Court of Appeal.

**Instructions For Providing Proposition 65 Warnings**  
**In Connection With the Use of Certain Leaded Crystal Tableware Products in**  
**Restaurants**  
**(effective May 2001)**

In order to comply with the court-ordered warning program, all restaurants or other food service establishments in the state of California that use leaded crystal tableware (including glasses, decanters, plates, bowls and other food contact items, but not including leaded crystal items not used with food, such as vases, candlesticks, sculpture, etc.) must provide Proposition 65 warnings to their patrons. Baccarat decanters, flacons, stoppered pitchers, mustard and jam pots are exempt from the warning, so you need not provide a warning if these are the only leaded crystal tableware items that are used in the restaurant.

You must provide the warning by posting a copy of the sign attached as Appendix 5 in a place where it will be seen by your customers before they consume food, such as near the main entrance, or near where people wait to be seated. The sign must measure at least 8 ½ inches by 11 inches. You may use the sign as is (*i.e.*, on heavy cardboard stock) or you may reprint it in another medium (*e.g.*, in the form of a decal or a plaque). You must also ensure that the sign is, at all times, posted where required, legible and in good condition.