

1 Gregory Sheffer (State Bar No. 173124)  
Larelei Schmohl (State Bar No. 203319)  
2 SHEFFER & CHANLER LLP  
160 Sansome Street 2nd Floor  
3 San Francisco, CA 94104-3706  
Telephone: (415) 434-9111  
4 Facsimile: (415) 434-9115

5 Attorneys for Plaintiff  
Whitney R. Leeman, Ph.D.

6 John E. Dittoe (State Bar No. 088244)  
7 REED SMITH CROSBY HEAFEY LLP  
1999 Harrison Street  
8 Oakland, CA 94612-3572

9 **Mailing Address:**  
P.O. Box 2084  
10 Oakland, CA 94604-2084

11 Telephone: (510) 763-2000  
Facsimile: (510) 273-8832

12 Attorneys for Defendant  
13 26 California Bazar Inc.

14  
15 SUPERIOR COURT OF CALIFORNIA – CITY AND COUNTY OF SAN FRANCISCO

17 WHITNEY R. LEEMAN, Ph.D.

18 Plaintiff,

19 vs.

20 26 CALIFORNIA BAZAR and DOES 1  
through 150,

21 Defendants.  
22

No. CGC 03-418036

**STIPULATION AND {PROPOSED}  
ORDER RE: CONSENT JUDGMENT**

23  
24 **1. INTRODUCTION**

25 This Stipulation and (Proposed) Order Re: Consent Judgment ("Agreement" or "Consent  
26 Judgment") is entered into by and between plaintiff Whitney Leeman, Ph.D. (hereafter  
27 "Dr. Leeman") and defendant 26 California Bazar Inc. (sued herein as 26 California Bazar)  
28 (hereafter "Bazar"), a California corporation, with Dr. Leeman and Bazar collectively referred to

1 as the "Parties". The Parties agree to the following terms and conditions:

2           **1.1** Dr. Leeman is an individual residing in Sacramento, California, who seeks to  
3 promote awareness of exposures to toxic chemicals and improve human health by reducing or  
4 eliminating hazardous substances contained in consumer and industrial products.

5           **1.2** Dr. Leeman alleges that Bazar has distributed and/or sold in the State of  
6 California certain glassware products with colored artwork and/or designs on the exterior surface  
7 of the glass with materials in that colored artwork and/or designs that contain lead (or lead  
8 compounds) that are listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of  
9 1986, California Health & Safety Code §§25249.5 *et seq.*, also known as Proposition 65,  
10 hereafter referred to as the "Listed Chemicals".

11           **1.3** A list of the Products which are covered by this Agreement is provided in Exhibit  
12 A (hereafter collectively referred to as the "Products").

13           **1.4** On or about February 7, 2003, Dr. Leeman first served Bazar and other public  
14 enforcement agencies with a document entitled "60-Day Notice of Violation" that provided  
15 Bazar and such public enforcers with notice that Bazar was allegedly in violation of Health &  
16 Safety Code §25249.6 for failing to warn purchasers that certain products that it sold expose  
17 users in California to one or more of the Listed Chemicals.

18           **1.5** On or about March 5, 2003, Dr. Leeman filed, but did not serve on Bazar, a  
19 complaint for restitution and injunctive relief entitled Whitney R. Leeman, Ph.D. v. 26 California  
20 Bazar, et. al., in the Superior Court in and for the City and County of San Francisco, naming  
21 Bazar as a defendant and alleging violations of Business & Professions Code Section 17200 and  
22 17500 on behalf of individuals in California who allegedly have been exposed to one or more of  
23 the Listed Chemicals contained in certain products sold by Bazar.

24           **1.6** On April 16, 2003, in the interest of the general public in California, Dr. Leeman  
25 filed, and thereafter served on Bazar, a First Amended Complaint, naming Bazar as a defendant  
26 and alleging violations of Health & Safety Code §25249.6 for those who had been allegedly  
27 exposed to one or more of the Listed Chemicals contained in the Products. On or about June 6,  
28 2003, Bazar served its Answer to Dr. Leeman's First Amended Complaint.

1           1.7    Bazar denies the material factual and legal allegations contained in Dr. Leeman's  
2 above mentioned 60-Day Notice of Violation and First Amended Complaint and maintains that  
3 all products distributed or sold by Bazar in California including, but not limited to, the Products,  
4 have been and are in compliance with all laws.

5           1.8    Nothing in this Agreement shall be construed as an admission by Bazar of any  
6 fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement  
7 constitute or be construed as an admission by Bazar of any fact, finding, conclusion, issue of law  
8 or violation of law. However, this paragraph shall not diminish or otherwise affect the  
9 obligations, responsibilities and duties of Bazar under this Agreement.

10          1.9    For purposes of this Agreement, the term "Effective Date" shall mean  
11 December 22, 2003.

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13       **2.    INJUNCTIVE RELIEF**

14          2.1    After December 30, 2003, Bazar shall not knowingly sell or offer for sale in  
15 California any of the Products containing the Listed Chemicals unless such Products comply  
16 with Sections 2.2 -2.4 below.

17          2.2    **Product Warnings:** Subject to Section 2.4, after December 30, 2003, Bazar shall  
18 not knowingly sell or distribute any of the Products in California unless warnings are provided as  
19 set forth below in Section 2.2(a) or Section 2.2(b):

20               a.    **Warning on the Products or Product Packaging:** A warning is affixed  
21 to the packaging, labeling or directly on the Products that state:

22                               **"WARNING: The materials used as colored decorations on the exterior of  
23                               these glassware products contain lead, a chemical known to  
24                               the State of California to cause birth defects or other  
25                               reproductive harm."**

26               b.    **Posting of In Store Sign(s):** One or more signs are posted at or near the  
27 point of sale or display of the Products for those Products that are sold in any Bazar store in  
28 California from which Bazar directly sells the Products to its customers that state:

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**"WARNING: The materials used as colored decorations on the exterior of glassware products sold in this store contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm."**

If Bazar knowingly sells some Products in its store(s) that satisfy the definition of Reformulated Products as defined in Paragraph 2.4 herein, then such Products shall be identified on the sign along with an explanation given that the warning statement does not apply to such Products.

c. The warning statements specified by Sections 2.2(a) and 2.2(b) above shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use or purchase. Any changes to the language or format of the warning required by this paragraph shall only be made following: (1) approval of Dr. Leeman; (2) after written notice to Dr. Leeman of at least fifteen (15) days for the opportunity to comment, receipt of approval from the California Attorney General's office; or (3) court approval.

**2.3 Interim Warnings:** In an attempt to ensure that all Products that may already be in the stream of commerce contain reproductive toxicity warnings, Bazar agrees to send a letter (hereafter referred to as the "Letter") (with a copy provided to Dr. Leeman's counsel) no later than February 1, 2004, to each of its California retail outlets that Bazar knows to have sold or believes to have sold any of the Products within the year prior to the Effective Date or are known or believed to have any inventory of the Products purchased from Bazar. Such Letter shall explain that the Products contain lead (or lead compounds) and assert the retailer outlet's duty to either: (a) destroy any of the Products remaining on the retailer's sales floors or otherwise in the retailer's inventory; (b) return such Products to Bazar; (c) provide in store warnings for the Products at or near their point of sale or display that state:

**"WARNING: The materials used as colored decorations on the exterior of glassware products sold in this store contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm."**

1 or (d) or apply warnings to the Products themselves or the consumer packaging of the Products  
2 that remain on the retailers sales floors or otherwise in the retailers inventory (provided the  
3 Product packaging will be available to the plain view of the consumer before purchase) that  
4 state:

5 **"WARNING: The materials used as colored decorations on the exterior of**  
6 **glassware products sold in this store contain lead, a chemical**  
7 **known to the State of California to cause birth defects or**  
8 **other reproductive harm."**

9 The Letter shall also include warning stickers for application to the Products or Product  
10 packaging and the Letter shall advise the retailer that the warning statement must be  
11 prominently placed with such conspicuousness as compared with other words, statements,  
12 designs, or devices as to render it likely to be read and understood by an ordinary individual  
13 under customary conditions of use or purchase. The Letter shall state that in the event the  
14 retailer does not provide the requisite Proposition 65 warnings, the retailer must destroy the  
15 Products or return to Bazar any Products remaining on the retailers' sales floor or otherwise in  
16 the retailers inventory, but that Bazar will refund the retailer any money that the retailer had  
17 paid to Bazar for the purchase of such Products, if the retailer chooses to return the Products to  
18 Bazar.

19 **2.4 Reformulated Products:** The Products shall be deemed to comply with  
20 Proposition 65 and be exempt from any Proposition 65 warning requirements under  
21 Sections 2.2 and 2.3 if:

22 a. the painted decoration is solely on the exterior of the Product exclusive of  
23 the top 20 millimeters of the ware (i.e., below the exterior portion of the lip and rim area as  
24 defined by American Society of Testing and Materials Standard Test Method C927-99,  
25 hereinafter the "Lip and Rim Area") produce either a nondetectable test result or a test result no  
26 higher than 1.0 micrograms (ug) of lead (depending on whether flame AAS or graphite furnace  
27 AAS is applied for the analysis respectively, which shall be at Bazar's sole option) using a Ghost  
28 Wipe™ test applied on painted portions of the surface of the Product performed as outlined in  
NIOSH method no. 9100; or

1           b.       the painted decoration extends into the exterior Lip and Rim Area or the  
2 interior (food contact surface) of the Product, a test result of all such painted portions acceptable  
3 under subparagraph (a) above, and a result of 0.5 micrograms/milliliter (ug/ml) of lead or less  
4 using ASTM method C 927-99); or

5           c.       the Products utilize paints on all decorations containing four one-  
6 hundredths of one percent (0.04%) lead by weight or less (as measured by a sample size of the  
7 paint approximately 50-100 mg) and contain no painted decoration within any part of the interior  
8 (food contact surface) of the Product or on the exterior portion of the Lip and Rim Area of the  
9 Product. By agreeing to the foregoing, Bazar does not admit that the above mentioned criteria,  
10 testing and analytical methodologies are necessarily appropriate for determining the amount or  
11 levels of exposure to lead (and lead compounds) from reasonably foreseeable use of the  
12 Products.

13           Should any court of this state enter an order or judgment in a case brought by Dr. Leeman  
14 or the People of the State of California, that sets forth standards defining when Proposition 65  
15 warnings will or will not be required for products substantially similar to the type and function of  
16 Products at issue here ("Alternative Standards"), or if the California Attorney General's office  
17 otherwise provides written endorsement (i.e. a writing that is circulated by the Attorney General  
18 that is not intended for the purpose of soliciting further input or comments) of Alternative  
19 Standards applicable to products that are of the same type and function as the Products, Bazar  
20 shall be entitled to seek a modification of this Consent Judgment as to be able to utilize and rely  
21 on such Alternative Standards in lieu of those set forth in subsections (a), (b), or (c) of this  
22 Paragraph. Dr. Leeman shall not unreasonably withhold consent to any proposed stipulation to  
23 effectuate such a modification.

24           Products satisfying the conditions of this paragraph are hereinafter referred to as  
25 "Reformulated Products". Bazar may comply with the requirements of this section by relying on  
26 the written specifications provided by its supplier(s), provided such reliance is in good faith.

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1     **3.     MONETARY PAYMENTS**

2             **3.1     Penalties Pursuant To Health & Safety Code §25249.7(b):** Pursuant to  
3 Health & Safety Code Section 25249.7(b), Bazar shall pay \$3,000 in civil penalties, with the  
4 penalty payment to be made within ten (10) calendar days of the Effective Date and made  
5 payable to "Sheffer & Chanler LLP in Trust For Whitney R. Leeman".

6             In the event that Bazar pays any penalty and the Consent Judgment is thereafter not  
7 ultimately approved by the Superior Court for the City and County of San Francisco, Dr. Leeman  
8 shall return any penalty funds paid under this paragraph, with interest thereon at the rate of  
9 1.00% per annum, simple interest, within fifteen (15) calendar days of effective written notice of  
10 the Court's decision. All penalty monies received shall be apportioned by Dr. Leeman in  
11 accordance with Health & Safety Code §25192, with 75% of these funds remitted to the State of  
12 California's Office of Environmental Health Hazard Assessment. Dr. Leeman shall bear all  
13 responsibility for apportioning and paying to the State of California the appropriate civil  
14 penalties paid in accordance with this paragraph.

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16     **4.     REIMBURSEMENT OF FEES AND COSTS**

17             **4.1     Reimbursement Of Fees And Costs:** The Parties acknowledge that Dr. Leeman  
18 and her counsel offered to resolve this dispute without reaching terms on the amount of fees and  
19 costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material  
20 terms of the agreement had been reached, and the matter settled. Bazar then expressed a desire  
21 to resolve the fee and cost issue concurrently with other settlement terms, so the Parties tried to  
22 and did reach an accord on the compensation due to Dr. Leeman and his counsel under the  
23 private attorney general doctrine codified at Code of Civil Procedure §1021.5 for all work  
24 performed through the Effective Date.

25             **4.2** Under the private attorney general doctrine codified at Code of Civil Procedure  
26 §1021.5, Bazar shall reimburse Dr. Leeman and her counsel for fees and costs, incurred as a  
27 result of investigating, bringing this matter to Bazar's attention, litigating and negotiating a  
28 settlement in the public interest. Bazar shall pay Dr. Leeman and her counsel \$15,000 for all

1 attorneys' fees, expert and investigation fees, and litigation costs within ten (10) calendar days of  
2 the Effective Date. Payment should be made payable to "Sheffer & Chanler LLP." If the  
3 Consent Judgment is not approved by the Superior Court in and for the City and County of San  
4 Francisco, Dr. Leeman and Sheffer & Chanler LLP will return all funds, with interest thereon at  
5 the rate of 1.00% per annum, simple interest, within fifteen (15) calendar days of effective  
6 written notice of the Court's decision.

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8 **5. RELEASE OF ALL CLAIMS**

9 **5.1 Dr. Leeman's Release of Bazar and Downstream Persons:** In further  
10 consideration of the promises and agreements herein contained, and for the payments to be made  
11 pursuant to Sections 3 and 4, Dr. Leeman, on behalf of herself, her agents, representatives,  
12 attorneys, successors and/or assignees, and in the interest of the general public, hereby waives all  
13 rights to institute or participate in, directly or indirectly, any form of legal action and releases all  
14 claims, including, without limitation, all actions, causes of action, in law or in equity, suits,  
15 liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including,  
16 but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever,  
17 whether known or unknown, fixed or contingent (collectively "Claims"), against Bazar and its  
18 distributors, wholesalers, auctioneers, retailers, dealers, customers, owners, purchasers, users,  
19 parent companies, corporate affiliates, and their respective officers, directors, attorneys,  
20 representatives, shareholders, agents, and employees (collectively, "Defendant Releasees")  
21 arising under Proposition 65, Business & Professions Code §17200 *et seq.* and Business &  
22 Professions Code §17500 *et seq.*, related to the Defendant Releasees' alleged failure to warn  
23 about exposures to or identification of lead (or lead compounds) contained in the Products.

24 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and  
25 binding resolution of any violation of Proposition 65, Business & Professions Code  
26 §17200 *et seq.* and Business & Professions Code §17500 *et seq.*, that have been or could have  
27 been asserted in the Complaint against Bazar for its alleged failure to provide clear and  
28 reasonable warnings of exposure to or identification of lead (or lead compounds) in the Products



1 or any other claim based on the facts or conduct alleged in the complaint.

2 In addition, Dr. Leeman, on behalf of herself, her attorneys, and her agents, waives all  
3 rights to institute or participate in, directly or indirectly, any form of legal action and releases all  
4 Claims against the Defendant Releasees arising under Proposition 65, Business & Professions  
5 Code §17200 *et seq.* and Business & Professions Code §17500 *et seq.*, related to the Defendant  
6 Releasees' alleged failure to warn about exposures to or identification of the Listed Chemicals  
7 contained in the Products and for all actions or statements made by Bazar or its attorneys or  
8 representatives, in the course of responding to alleged violations of Proposition 65, Business &  
9 Professions Code §17200 or Business & Professions Code §17500 by Bazar. Provided, however,  
10 that Dr. Leeman shall remain free to institute any form of legal action to enforce the provisions  
11 of this Consent Judgment.

12 It is specifically understood and agreed that the Parties intend that Bazar's compliance  
13 with the terms of this Release resolves all issues and liability, now and in the future, (so long as  
14 Bazar complies with the terms of the Agreement), concerning the Defendant Releasees'  
15 compliance with the requirements of Proposition 65, Business and Professions Code §§17200 *et*  
16 *seq.* and Business & Professions Code §17500 *et seq.*, as to the Listed Chemicals in the Products.

17 **5.2. Bazar's Release of Dr. Leeman:** Bazar waives all rights to institute any form of  
18 legal action against Dr. Leeman, or her attorneys or representatives, for all actions taken or  
19 statements made by Dr. Leeman and her attorneys or representatives, in the course of seeking  
20 enforcement of Proposition 65, Business & Professions Code §17200 *et seq.* or Business &  
21 Professions Code §17500 *et seq.* against Bazar as it relates to the Products.

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23 **6. SALES DATA:** Bazar understands that the sales data that has been provided to  
24 Dr. Leeman's counsel was a material factor upon which Dr. Leeman has relied to determine the  
25 amount of payments, if any, made pursuant to Health & Safety Code §25249.7(b) in this  
26 Agreement. To the best of Bazar's knowledge, the sales data provided is true and accurate. In  
27 the event that Dr. Leeman discovers facts which demonstrate to a reasonable degree of certainty  
28 that the sales data is materially inaccurate, the parties shall meet in a good faith attempt to

1 resolve the matter within ten (10) days of Bazar's receipt of notice from Dr. Leeman of her intent  
2 to challenge the accuracy of the sales data. If this good faith attempt fails to resolve  
3 Dr. Leeman's concerns, Dr. Leeman shall have the right to re-institute an enforcement action  
4 against Bazar for those additional Products, based upon any existing 60 Day Notices of Violation  
5 served on Bazar. In such case, all applicable statutes of limitation shall be deemed tolled for the  
6 period between the date Dr. Leeman filed the instant action and the date Dr. Leeman notifies  
7 Bazar that she is re-instituting the action for the additional Products. Provided, however, that:  
8 (a) Dr. Leeman shall not have the option of exercising her rights under this Paragraph more than  
9 one year after the Effective Date and (b) Bazar shall have no additional liability, and Dr. Leeman  
10 waives any claim that might otherwise be asserted, from the Effective Date until the date that  
11 Dr. Leeman provides notice under this Paragraph, so long as Bazar has complied with the  
12 requirements of Section 2 for all of the Products, including those numbers of Products  
13 additionally discovered.

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15 **7. COURT APPROVAL:** If, for any reason, this Consent Judgment is not ultimately  
16 approved and entered by the Court within one hundred eight (180) days after the Effective Date,  
17 this Agreement shall, at Bazar's option be deemed null and void and all monies provided to  
18 Dr. Leeman or her counsel shall be refunded to Bazar within fifteen (15) days after receipt of  
19 written notice to Dr. Leeman's counsel from Bazar to this paragraph.

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21 **8. SEVERABILITY:** In the event that any of the provisions of this Agreement are held by  
22 a court to be unenforceable, the validity of the enforceable provisions remaining shall not be  
23 adversely affected.

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25 **9. ATTORNEYS' FEES:** In the event that a dispute arises with respect to any provision(s)  
26 of this Agreement (including, but not limited to, disputes arising from payments to be made  
27 under this Agreement), the prevailing party shall be entitled to recover costs and reasonable  
28 attorneys' fees incurred from the resolution of such dispute. This provision, however, shall not



1 any fact, finding, conclusion, issue of issue of law, or violation of law, such being specifically  
2 denied by Bazar. Bazar reserves all of its rights and defenses with regard to any claim by any  
3 party under Proposition 65 or otherwise. However, this Paragraph shall not diminish or  
4 otherwise affect Bazar's obligations, responsibilities and duties under this Consent Judgment.

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6 **13. COUNTERPARTS; FACSIMILE SIGNATURES:** This Consent Judgment may be  
7 executed in counterparts and by facsimile, each of which shall be deemed an original, and all of  
8 which, when taken together, shall constitute one and the same document.

9  
10 **14. COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(f):** Dr. Leeman  
11 agrees to comply with the reporting form requirements referenced in Health & Safety Code  
12 § 25249.7(f) . Pursuant to regulations promulgated under that section, Dr. Leeman shall present  
13 this Consent Judgment and a noticed motion for its consideration by the Court to the California  
14 Attorney General's Office within two (2) days after receiving all of the necessary signatures. It  
15 will then be presented to the Superior Court for the City and County of San Francisco for a  
16 hearing scheduled not earlier than forty-five (45) days thereafter.

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

**AGREED TO:**

DATE: 12/24/03

Whitney R. Leeman  
Plaintiff Whitney R. Leeman, Ph.D.

**AGREED TO:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
Defendant 26 California Bazar Inc.

**APPROVED AS TO FORM:**

DATE: 12/29/03

Gregory Sheffer FOR  
Gregory Sheffer  
Attorneys for Plaintiff  
Whitney R. Leeman, Ph.D.

**APPROVED AS TO FORM:**

DATE: \_\_\_\_\_

\_\_\_\_\_  
John E. Dittoe  
Attorneys for Defendant  
26 California Bazar Inc.



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**EXHIBIT A**

All glassware with colored artwork or designs (containing lead) on the exterior sold or distributed by Bazar.