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ENDORSED
FILED
San Francisco County Superior Court

JUN 3 2005

GORDON PARK-LI, Clerk
BY: GARTH SAYERS
Deputy Clerk

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 IN AND FOR THE COUNTY OF SAN FRANCISCO
12 UNLIMITED CIVIL JURSDICTION

13 WHITNEY R. LEEMAN, Ph.D.

14 Plaintiff,

15 v.

16 ARC INTERNATIONAL NORTH
17 AMERICA, INC.; et al.,

18 Defendants.

Consolidated Case No. CGC-003-418025

[CONSOLIDATED]

**[PROPOSED] ORDER PURSUANT TO
TERMS OF CONSENT JUDGMENT**

Date: June 3, 2005

Time: 9:00 a.m.

Dept: 501

Judge: Hon. James McBride

19 WHITNEY R. LEEMAN, Ph.D.

20 Plaintiff,

21 vs.

22 BED BATH & BEYOND, INC., et al.,

23 Defendants.

No. CGC-03-422636

(Consolidated with No. CGC-03-418025)

24 [PROPOSED] ORDER PURSUANT TO TERMS OF CONSENT JUDGMENT
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1 In the above-entitled action, Plaintiff WHITNEY R. LEEMAN, Ph.D. and
2 Defendant BED BATH AND BEYOND, INC. ("Settling Defendant"), having agreed
3 through their respective counsel that judgment be entered pursuant to the terms of the
4 Consent Judgment entered into by the above-referenced parties and attached hereto as
5 **Exhibit A**; and after consideration of the papers submitted and the arguments presented, the
6 Court finds that the settlement agreement set out in the attached Consent Judgment meets
7 the criteria established by Senate Bill 471, in that:

- 8 1. The health hazard warning that is required by the Consent Judgment complies
9 with Health & Safety Code section 25249.7 (as amended by Senate Bill 471);
- 10 2. The reimbursement of fees and costs to be paid pursuant to the parties' Consent
11 Judgment is reasonable under California law; and
- 12 3. The civil penalty amount to be paid pursuant to the parties' Consent Judgment is
13 reasonable,

14 IT IS HEREBY ORDERED that judgment be entered in this case, in accordance with
15 the terms of the Consent Judgment, attached hereto as **Exhibit A**.

16 IT IS SO ORDERED.

17 Dated: **JUN 3 2005**

JAMES J. McBRIDE

Hon. James McBride
JUDGE OF THE SUPERIOR COURT

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[PROPOSED] ORDER PURSUANT TO TERMS OF CONSENT JUDGMENT

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10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
 11 FOR THE CITY AND COUNTY OF SAN FRANCISCO
 12 UNLIMITED CIVIL JURISDICTION

13 WHITNEY R. LEEMAN, Ph.D.

14 Plaintiff,

15 vs.

16 ARC INTERNATIONAL NORTH AMERICA,
 17 INC. et al.,

18 Defendants.

Consolidated Case No. CGC-003-418025

Consolidated with Case Nos. 418027, 418030,
 418031, 418034, 418036, 418037, 418039,
 418040, 418041, 418042, 418044, 419045,
 419705, 422636, 422691, 424682, 429467 and
 429536

**STIPULATION AND [PROPOSED]
 ORDER RE: CONSENT JUDGMENT**

19 **1. INTRODUCTION**

20 **1.1 Plaintiff and Settling Defendant** This Consent Judgment is entered into by and
 21 between plaintiff Whitney Leeman, Ph.D. (hereafter "Dr. Leeman" or "Leeman" or "Plaintiff") and
 22 BED BATH & BEYOND INC. (hereafter "Bed Bath"), with Plaintiff and Bed Bath collectively
 23 referred to as the "Parties" and Dr. Leeman and Bed Bath each being a "Party".

24 **1.2 Plaintiff** Dr. Leeman is an individual residing in Sacramento, California who seeks
 25 to promote awareness of exposures to toxic chemicals and improve human health by reducing or
 26 eliminating hazardous substances contained in consumer and industrial products.

27 **1.3 General Allegations** Plaintiff alleges that Bed Bath has distributed and/or sold in the
 28 State of California glassware with colored designs and/or artwork on the exterior surface that

1 contain lead (and/or lead compounds) that are listed pursuant to the Safe Drinking Water and Toxic
2 Enforcement Act of 1986, California Health & Safety Code §§25249.5 et seq., also known as
3 Proposition 65, to cause cancer and birth defects and other reproductive harm. Lead (and/or lead
4 compounds) shall be referred to herein as "Listed Chemicals."

5 **1.4 Product Descriptions** The products that are covered by this Consent Judgment are
6 defined as follows: glassware with colored artwork, designs and/or markings (containing lead) on
7 their exterior surface, including, but not limited to, measuring glasses, wine glasses and goblets.
8 Such products collectively are referred to herein as the "Products." All products identified on
9 Exhibit A are specifically covered by this Consent Judgment.

10 **1.5 Notices of Violation** On April 25, 2003, Dr. Leeman alleges that she served Bed
11 Bath and various public enforcement agencies with a document, entitled "60-Day Notice of
12 Violation" ("Notice") that provided Bed Bath and such public enforcers with notice that alleged that
13 Bed Bath was in violation of Health & Safety Code §25249.6 for failing to warn purchasers that
14 certain products that it sold expose users in California to lead and lead compounds.

15 **1.6 Complaint** On July 21, 2003, Dr. Leeman, who asserts that she is acting in the
16 interest of the general public in California, filed a complaint (hereafter referred to as the
17 "Complaint" or the "Action") in the Superior Court for the City and County of San Francisco against
18 various defendants, including Bed Bath, alleging violations of Health & Safety Code § 25249.6
19 based on the alleged exposures to one or more of the Listed Chemicals contained in certain products
20 sold by Bed Bath.

21 **1.7 No Admission** Bed Bath denies the material factual and legal allegations contained
22 in Plaintiff's Notice and Complaint and maintains that all products that it has sold and distributed in
23 California, including the Products, have been and are in compliance with all laws. Nothing in this
24 Consent Judgment shall be construed as an admission by Bed Bath of any fact, finding, issue of law,
25 or violation of law, nor shall compliance with this Agreement constitute or be construed as an
26 admission by Bed Bath of any fact, finding, conclusion, issue of law or violation of law. However,
27 this section shall not diminish or otherwise affect the obligations, responsibilities and duties of Bed
28 Bath under this Consent Judgment.

1 **1.8 Consent to Jurisdiction** For purposes of this Consent Judgment only, the Parties
2 stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint
3 and personal jurisdiction over Bed Bath as to the acts alleged in the Complaint, that venue is proper
4 in the County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment
5 and to enforce the provisions thereof.

6 **1.9 Effective Date** For purposes of this Consent Judgment, "Effective Date" shall be
7 December 21, 2004.

8 **2. INJUNCTIVE RELIEF: PROPOSITION 65 WARNINGS AND REFORMULATION**

9 **2.1 Warning Obligations For Covered Products**

10 **2.1.A. Required Warnings and Non-exempt Products** After December 31, 2004,
11 Bed Bath shall not sell or offer for sale in California any Covered Products containing the Listed
12 Chemicals, unless warnings are given in accordance with one or more provisions in subsection 2.2
13 below. As used in this Consent Judgment, "Covered Products" shall mean all Products sold in
14 California, except those excluded in subsection 2.1.B below.

15 **2.1.B. Exceptions** The Section 2.1 and 2.2 warning requirements shall **not** apply to:

- 16 i. any Products manufactured before December 31, 2004,
- 17 ii. Reformulated Products, or
- 18 iii. any Products manufactured by any other person in the course of doing
19 business who is subject to a final judgment addressing Proposition 65
20 warning obligations arising from alleged exposures to glassware with
21 colored artwork or design on the exterior surface.

22 **2.2 Clear And Reasonable Warnings**

23 **2.2.A. Product Labeling** A warning is affixed to the packaging, labeling or directly
24 to or on a Covered Product by Bed Bath (or someone on its behalf, including its agents, or the
25 manufacturers, importers, or distributors of the Covered Products), that states:

26 **WARNING: The materials used as colored decorations on the exterior of this
27 product contain lead, a chemical known to the State of California
28 to cause birth defects or other reproductive harm.**
 or

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WARNING: The materials used as colored decorations on the exterior of these products contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.¹
or

WARNING: The materials used as colored decorations on the exterior of the following products contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.
or

WARNING: The exterior handpaint used on this product contains lead, a chemical known to the State of California to cause birth defects or other reproductive harm. Wash hands after handling to minimize exposure.

Warnings issued for Covered Products pursuant to this subsection 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 subsection shall only be made following: (1) approval of Plaintiff; (2) approval from the California Attorney General's Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to comment; or (3) Court approval.

2.2.B. Point-of-Sale Warnings Bed Bath may execute its warning obligations, where applicable, through arranging for the posting of signs at its retail outlets in the State of California at which Covered Products are sold, in accordance with the terms specified in subsections 2.2.B.1, 2.2.B.2 and 2.2.B.3.

2.2.B.1. Point of Sale warnings may be provided through one or more signs posted at or near the point of sale or display of the Covered Products that state:

WARNING: The materials used as colored decorations on the exterior of this product contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm.
or

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.²

¹ This formulation of the warning may only be used with respect to Covered Products when sold as a set.

² This formulation of the warning may only be used where the store in which the Covered Products are sold sells only

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or

WARNING: The materials used as colored decorations on the exterior of the following glassware products sold in this store contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm; [list Covered Products here]

or

WARNING: The exterior decal used on the products listed contains lead, a chemical known to the State of California to cause cancer, birth defects or other reproductive harm. Wash hands after handling to minimize exposure.

2.2.B.2. In lieu of displaying warning signs with the language set forth above, Bed Bath may elect to combine any point-of-sale warning signs required under this Consent Judgment with any warnings it provides for ceramic tableware (as defined in the Consent Judgment in *People v. Josiah Wedgwood & Sons, Inc.*) or lead crystal (as defined in the Consent Judgment in *Mateel Environmental Justice Foundation v. T.J. Maxx*), through use of the warning signs in the form of Exhibits B or C. If Bed Bath elects to provide combined warnings through use of Exhibit B, then it shall place the Designated Symbol (the yellow triangle shown in Exhibit B) next to each display of Covered Product, ceramic tableware, and lead crystal for which a warning is to be given. If Bed Bath elects to provide combined warnings through use of Exhibit C, then the Covered Products for which the warning is to be given shall be identified by manufacturer and product description in the warning sign, and Designated Symbols need not be displayed. If Bed Bath elects to combine its Covered Product and other product warnings under this subsection, display of warnings for the other products and the Covered Products in the manner set forth in this subsection shall constitute compliance with Proposition 65 for all such products.

2.2.B.3. A point of sale warning provided pursuant to subsection 2.2.B.1 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 and shall be placed or written in a manner such that the consumer understands to which *specific* Covered Products the warnings apply so as to

Products constituting Covered Products.

1 minimize if not eliminate the chances that an overwarning situation will arise. Any changes to the
2 language or format of the warning required for Covered Products by this subsection shall only be
3 made following: (1) approval of Plaintiff; (2) approval from the California Attorney General's
4 Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for the
5 opportunity to comment; or (3) Court approval.

6 **2.2.C. Internet Sales.** After January 31, 2005, Bed Bath shall not knowingly sell or
7 distribute any of the Covered Products by the Internet to California residents, unless warnings are
8 provided as set forth below.

9 For Covered Products that a Settling Retailer knows require a warning pursuant to
10 this Consent Judgment and that are sold by Bed Bath by mail order or from the Internet to California
11 residents, a warning containing the language in Section 2.2 shall be included, at Bed Bath's sole
12 option, either: (a) on the website (if any) pursuant to Section 2.2.C.1.; or (b) with the Product when
13 it is shipped to an address in California pursuant to Section 2.2.C.2. Any warnings given on the
14 website shall identify the *specific* Covered Products to which the warning applies.

15 **2.2.C.1. Internet Web Sites.** The warning text, or a link to a page
16 containing the warning text, shall be displayed either (a) on the same page on which a Covered
17 Product is displayed, (b) on the same page as any order form for a Covered Product, (c) on the same
18 page as the price for any Covered Product, (d) on one or more pages displayed to a purchaser over
19 the Internet or via electronic mail during the checkout and order confirmation process for sale of a
20 Covered Product, or (e) in any manner such that is likely to be read and understood by an ordinary
21 individual under customary conditions of purchase of a Covered Product, including the same
22 language as that appearing in Section 2.2.B. If a link is used, it shall state "California residents click
23 here for Proposition 65 information" and shall be of a size equal to the size of other links on the
24 page.

25 **2.2.C.2. Package Insert or Label.** Alternatively, a warning may be
26 provided with the Covered Product when it is shipped directly to a consumer in California, by
27 (a) product labeling pursuant to Section 2.2.A above, (b) inserting a card or slip of paper measuring
28 at least 4" x 6" in the shipping carton, or (c) including the warning on the packing slip or customer

1 invoice identifying the Covered Product in lettering of the same size as the description of the
 2 Covered Product. The warning shall include the language appearing in Section 2.2.A and shall
 3 inform the consumer that he or she may return the product for a full refund within 30 days of receipt.

4 **2.3 Reformulation Standards:** Products shall be deemed “Reformulated Products” and
 5 not require Proposition 65 warnings pursuant to Sections 2.1 and 2.2 if they satisfy the conditions of
 6 Section 2.3.A or Section 2.3.B.

7 2.3.A. If the colored artwork, designs or markings applied to the exterior surface of
 8 the Products exclusive of the top 20 millimeters of the ware (i.e. below the exterior portion of the lip
 9 and rim area as defined by American Society of Testing and Materials Standard Test Method C927-
 10 99, produce a test result no higher than 1.0 micrograms (ug) of lead (depending on whether flame
 11 AAS or graphite furnace AAS is applied for the analysis respectively, which shall be at Bed Bath’s
 12 sole option) using a Ghost Wipe TM test applied on painted portions of the surface of the Product
 13 performed as outlined in NIOSH method no. 9100; or

14 2.3.B If the colored artwork, designs or markings applied to the exterior surface of
 15 any Products contains six one-hundredths of one percent (0.06%) lead by weight or less as
 16 measured, at Bed Bath’s option, either before or after the material is fired onto (or otherwise affixed
 17 to) the Product, using a sample size of the materials in question measuring approximately 50-100 mg
 18 and a test method of sufficient sensitivity to establish a limit of quantitation (as distinguished from
 19 detection) of less than 600 parts per million (“ppm”).

20 **2.4. Future Settlements and Standards:** Should any court enter a final judgment in a case
 21 brought by Dr. Leeman or the People of the State of California involving glassware with colored
 22 artwork, designs or markings on the exterior that allegedly contain lead which sets forth standards
 23 defining when Proposition 65 warnings will or will not be required (“Alternative Standards”), Bed
 24 Bath shall be entitled to seek a modification of this Consent Judgment pursuant to section 15 herein,
 25 so as to be able to utilize and rely on such Alternative Standards in lieu of those set forth in Section
 26 2.3 of this Consent Judgment. Dr. Leeman shall not unreasonably contest any proposed application
 27 to effectuate such a modification provided that the Products for which such a modification are
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1 sought are substantially similar in type and function to those for which the Alternative Standards
2 apply.

3 **3. MONETARY PAYMENTS**

4 **3.1 Penalties Pursuant To Health & Safety Code §25249.7(b)** Pursuant to Health &
5 Safety Code Section 25249.7(b), Bed Bath (or one or more agents or suppliers on behalf of Bed
6 Bath) shall pay a total of \$26,000 in civil penalties in two installments with the first payment of
7 \$14,000 to be made not later than January 7, 2005, and made payable to "Chanler Law Group in
8 Trust For Whitney R. Leeman." The second penalty payment of \$12,000 shall be paid on January 20,
9 2006; however, such second payment shall be waived in the event that Bed Bath certifies on or
10 before January 10, 2006, that 60% or more of the Products it sold in California in calendar year 2005
11 were Reformulated Products; provided however, that Products manufactured before December 31,
12 2004 or Products manufactured by someone who is subject to a final judgment addressing
13 Proposition 65 warning obligations arising from alleged exposures to glassware with colored artwork
14 or design on the exterior surface, shall not be included in this calculation. Any such certification
15 with respect to the percentage of Reformulated Products sold shall specify the Product (by Product
16 name, SKU or UPC Code) and the number of units sold for each such Product.

17 **3.1.A.** In the event that Bed Bath (or one or more of its agents or suppliers on Bed
18 Bath's behalf) pays any penalty and the Consent Judgment is not thereafter approved and entered by
19 the Court, Dr. Leeman shall return to Bed Bath any penalty funds paid under this agreement within
20 fifteen (15) days of receipt of a written request from Bed Bath following notice of the issuance of the
21 Court's decision.

22 **3.2 Apportionment of Penalties Received** After Court approval of this Consent
23 Judgment, all penalty monies received shall be apportioned by Plaintiff in accordance with Health &
24 Safety Code § 25192, with 75% of these funds remitted to the State of California's Office of
25 Environmental Health Hazard Assessment and the remaining 25% of these penalty monies retained
26 by Plaintiff as provided by Health & Safety Code § 25249.12(d). Plaintiff shall bear all
27 responsibility for apportioning and paying to the State of California the appropriate civil penalties
28 paid in accordance with this section.

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

2 4.1 The Parties acknowledge that Plaintiff and her counsel offered to resolve this dispute
3 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
4 this fee issue to be resolved after the material terms of the agreement had been settled. Bed Bath
5 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
6 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
7 Plaintiff and her counsel under the private attorney general doctrine codified at Code of Civil
8 Procedure § 1021.5 for all work performed through the Effective Date of the Agreement. Under the
9 private attorney general doctrine codified at Code of Civil Procedure § 1021.5, Bed Bath shall
10 reimburse Plaintiff and her counsel for fees and costs, incurred as a result of investigating, bringing
11 this matter to Bed Bath's attention, litigating and negotiating a settlement in the public interest. Bed
12 Bath (or one or more of its agents or suppliers on Bed Bath's behalf) shall pay Plaintiff and her
13 counsel \$46,000 for all attorneys' fees, expert and investigation fees, and litigation costs. The
14 payment shall be made payable to the "Chanler Law Group" and shall be delivered to Plaintiff's
15 counsel at the address set forth in Section 11 on or before January 7, 2005. Except as specifically
16 provided in this Consent Judgment, Bed Bath shall have no further obligation with regard to
17 reimbursement of Plaintiff's attorney's fees and costs with regard to the Products covered in this
18 Action.

19 **5. RELEASE OF ALL CLAIMS**

20 5.1 **Plaintiff's General Release as to Bed Bath:** In further consideration of the
21 promises and agreements herein contained, and for the payments to be made pursuant to Sections 3
22 and 4, Plaintiff, on behalf of herself, her past and current agents, representatives, attorneys,
23 successors and/or assignees, and in the interest of the general public, hereby waives all rights to
24 institute or participate in, directly or indirectly, any form of legal action and release all claims,
25 including, without limitation, all actions, causes of action, in law or in equity, suits, liabilities,
26 demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited
27 to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
28 unknown, fixed or contingent (collectively "Claims"), against Bed Bath and its licensees,

1 auctioneers, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates,
2 subsidiaries and their respective officers, directors, attorneys, representatives, shareholders, agents,
3 and employees (collectively, "Bed Bath Releasees") arising under Proposition 65, Business &
4 Professions Code § 17200 et seq. and Business & Professions Code § 17500 et seq., related to Bed
5 Bath's or Bed Bath Releasees' alleged failure to warn about exposures to or identification of Listed
6 Chemicals contained in the Products.

7 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
8 binding resolution of any violation of Proposition 65, Business & Professions Code §§ 17200 et seq.
9 and Business & Professions Code §§ 17500 et seq., that have been or could have been asserted in the
10 Complaints against Bed Bath for its alleged failure to provide clear and reasonable warnings of
11 exposure to or identification of Listed Chemicals in the Products.

12 In addition, Plaintiff, on behalf of herself, her attorneys, and their agents, waive all rights to
13 institute or participate in, directly or indirectly, any form of legal action and releases all Claims
14 against the Bed Bath Releasees arising under Proposition 65, Business & Professions Code §§ 17200
15 et seq. and Business & Professions Code §§ 17500 et seq., related to each of the Bed Bath
16 Releasees' alleged failures to warn about exposures to or identification of Listed Chemicals
17 contained in the Products and for all actions or statements made by Bed Bath or its attorneys or
18 representatives, in the course of responding to alleged violations of Proposition 65, Business &
19 Professions Code §§ 17200 or Business & Professions Code §§ 17500 by Bed Bath. Provided
20 however, Plaintiff shall remain free to institute any form of legal action to enforce the provisions of
21 this Consent Judgment.

22 It is specifically understood and agreed that the Parties intend that Bed Bath's compliance
23 with the terms of this Consent Judgment resolves all issues and liability, now and in the future (so
24 long as Bed Bath complies with the terms of the Consent Judgment) concerning Bed Bath and the
25 Bed Bath Releasees' compliance with the requirements of Proposition 65, Business and Professions
26 Code §§ 17200 et. seq. and Business & Professions Code §§ 17500 et seq., as to the Listed
27 Chemicals in the Products.

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1 **5.2 Plaintiff's Release as to Bed Bath's Supplier Portmeirion:** In further
2 consideration of the promises and agreements herein contained, and for the payments to be made
3 pursuant to Sections 3 and 4 by and on behalf of Bed Bath, Plaintiff, on behalf of herself, her past
4 and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the
5 general public, and pursuant to the authorities derived from a 60 Day Notice she issued to
6 Portmeirion Group PLC and Portmeirion Potteries Ltd on September 5, 2004 pursuant to Health &
7 Safety Code & 25249.7(d) hereby waives all rights to institute or participate in, directly or indirectly,
8 any form of legal action and releases all claims, including, without limitation, all actions, causes of
9 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
10 losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees)
11 of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"),
12 against Portmeirion Group PLC, Portmeirion Potteries Ltd and Portmeirion USA (collectively,
13 "Portmeirion") and their corporate affiliates, distributors, retailers, and other customers and their
14 respective officers, directors, attorneys, representatives, shareholders, agents, and employees
15 (collectively, "Portmeirion Releasees") arising out of Products that Portmeirion has sold or supplied
16 to Bed Bath and others doing business in California under Proposition 65, Business & Professions
17 Code § 17200 et seq. and Business & Professions Code § 17500 et seq., and/or otherwise related to
18 the alleged failure of the Portmeirion Releasees to warn about exposures to or identification of
19 Listed Chemicals contained in the Products.

20 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
21 binding resolution of any violation of Proposition 65, Business & Professions Code §§ 17200 et seq.
22 and Business & Professions Code §§ 17500 et seq., that have been or could have been asserted
23 against the Portmeirion Releasees for their alleged failure to provide clear and reasonable warnings
24 of exposure to or identification of Listed Chemicals in the Products.

25 **5.3 Plaintiff's Release as to Bed Bath's Supplier Ambiance Collections:** In further
26 consideration of the promises and agreements herein contained, and for the payments to be made
27 pursuant to Sections 3 and 4 by and on behalf of Bed Bath, Plaintiff, on behalf of herself, her past
28 and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the

1 general public, pursuant to Health & Safety Code & 25249.7(d) hereby waives all rights to institute
2 or participate in, directly or indirectly, any form of legal action and releases all claims, including,
3 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,
4 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,
5 investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or
6 unknown, fixed or contingent (collectively "Claims"), against Ambience Collections ("Ambience")
7 and its corporate affiliates and their respective officers, directors, attorneys, representatives,
8 shareholders, agents, and employees (collectively, "Ambience Releasees") arising out of
9 Ambience's Products sold by Bed Bath and under Proposition 65, Business & Professions Code §
10 17200 et seq. and Business & Professions Code § 17500 et seq., and/or otherwise related to the
11 alleged failure of the Ambience Releasees to warn about exposures to or identification of Listed
12 Chemicals contained in the Ambience Products Bed Bath sold.

13 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and
14 binding resolution of any violation of Proposition 65, Business & Professions Code §§ 17200 et seq.
15 and Business & Professions Code §§ 17500 et seq., that have been or could have been asserted
16 against the Ambience Releasees for its alleged failure to provide clear and reasonable warnings of
17 exposure to or identification of Listed Chemicals in the Ambience Products Bed Bath sold.

18 **5.4 Plaintiff's Non-Release of Bed Bath's Supplier Circle Imports:** By this Release,
19 the Parties understand that in affording Bed Bath with a general release of all potential Proposition
20 65, Business & Professions Code §§ 17200 et seq. and Business & Professions Code §§ 17500 et
21 seq. liabilities ("Liabilities") arising out of Bed Bath's Product sales, Plaintiff is not releasing Bed
22 Bath from such Liabilities arising out of Bed Bath's sale of Products supplied by Circle Imports
23 ("Circle) and is not releasing Circle or waiving its right to pursue Circle for any Liabilities arising
24 out of those Circle Products and that none of the money being paid pursuant to Sections 3 and 4 of
25 this Consent Judgment is for any release associated with such Circle Products. However, by this
26 settlement, Plaintiff is agreeing to dismiss and not pursue, in this action, any claims that she may
27 have against Bed Bath arising out of Bed Bath's California sales of Circle Products. Bed Bath
28 understands that it may be pursued for any alleged Proposition 65 violations arising out of its sale of

1 Circle Products in a separate lawsuit that has or may be filed against Circle by Plaintiff or someone
2 else in the interest of the general public of the state of California and Bed Bath agrees that it may be
3 brought into such action as a defendant. Bed Bath further agrees to execute an agreement tolling the
4 statute of limitations against Bed Bath for any claims arising out of Bed Bath's California sales of
5 Circle Products after April 25, 2002 and before the Effective Date.

6 **5.5 Bed Bath's Release of Plaintiff** Bed Bath waives all rights to institute any form of
7 legal action against Plaintiff, or her attorneys or representatives, for all actions taken or statements
8 made by Plaintiff and her attorneys or representatives, in the course of seeking enforcement of
9 Proposition 65, Business & Professions Code §§ 17200 et seq. or Business & Professions Code §§
10 17500 et seq. in this Action.

11 **6. COURT APPROVAL**

12 This Consent Judgment is not effective until it is approved and entered by the Court and shall
13 be null and void if, for any reason, it is not approved and entered by the Court within one year after
14 it has been fully executed by all Parties, in which event any monies that have been provided to
15 Plaintiff or her counsel pursuant to Section 3 and/or section 4 above, shall be refunded within fifteen
16 (15) days.

17 **7. SEVERABILITY**

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

21 **8. ATTORNEYS' FEES**

22 In the event that a dispute arises with respect to any provision(s) of this Consent Judgment,
23 the prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable and
24 necessary costs and reasonable attorneys' fees incurred from the resolution of such dispute.

25 **9. GOVERNING LAW**

26 The terms of this Consent Judgment shall be governed by the laws of the State of California
27 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
28 rendered inapplicable by reason of law generally, or as to the Products specifically, then Bed Bath

1 shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent
2 that, those Products are so affected.

3 **10. ENFORCEMENT OF CONSENT JUDGMENT**

4 **10.1** Before moving to enforce the terms and conditions of Section 2 of this Consent
5 Judgment against Bed Bath with respect to an alleged violation occurring at a retail outlet (defined
6 below) located in California, Plaintiff and others must follow the procedures set forth in Sections
7 10.2 through 10.4.

8 **10.2** In the event that Plaintiff and/or her attorneys, agents, assigns, or any other person
9 acting in the public interest under Health & Safety Code § 25249.7(d), (hereinafter "Notifying
10 Person") identify one or more retail stores in California operated by Bed Bath or a Defendant
11 Releasee (hereinafter "retail outlet") at which Products are sold which do not satisfy this Consent
12 Judgment's requirements, such Notifying Person shall notify Bed Bath, in writing, of such alleged
13 failure to warn (the "Notice of Breach"). The Notice of Breach shall be sent by first class mail, with
14 proof of service, to the person(s) identified in Section 11 below, and must be served within sixty (60)
15 days of the date the alleged violation was observed. The Notice of Breach shall identify the date the
16 alleged violation was observed and the retail outlet in question, and reasonably describe the nature of
17 the alleged violation with sufficient detail to allow Bed Bath to determine the basis of the claim
18 being asserted and the identities of the Covered Products to which those assertions apply.

19 **10.3** In the event that the Notifying Person identifies a specific retail outlet, other than the
20 specific one identified in Section 10.2 of this Consent Judgment, selling other Covered Products not
21 compliant with this Consent Judgment, such Notifying Person shall serve Bed Bath with another
22 Notice of Breach in the manner described in Section 10.2 and provide the information required in
23 Section 10.2.

24 **10.4** The Notifying Person shall take no further action against Bed Bath or Defendant
25 Releasee, unless the Notifying Person discovers at least thirty (30) days and no greater than six (6)
26 months after service of the Notice of Breach served pursuant to Sections 10.2 and 10.3, another
27 failure to warn for any Covered Product previously identified by the Notifying Person, whether or
28 not the alleged failure to warn is at the same retail outlet(s) identified in the Notices of Breach

1 served pursuant to Sections 10.2 and 10.3.

2 **11. NOTICES**

3 All correspondence and notices required to be provided pursuant to this Consent Judgment
4 shall be in writing and personally delivered or sent by: (i) first-class, registered, certified mail,
5 return receipt requested or (ii) overnight courier on either Party by the others at the following
6 addresses.

7 To Bed Bath:

8 Kenneth O. Bradley, Esq.
9 Litigation Counsel
10 Bed Bath & Beyond Inc.
650 Liberty Avenue
Union, New Jersey 07083

11 With a copy to:

12 John E. Dittoe, Esq.
13 Reed Smith LLP
1999 Harrison Street Suite 2400
14 Oakland, CA 94612

15 To Plaintiff:

16 Clifford A. Chanler, Esq.
17 Chanler Law Group
71 Elm Street, Suite 8
New Canaan, CT 06840

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

20 **12. NO ADMISSIONS**

21 Nothing in this Consent Judgment shall constitute or be construed as an admission by Bed
22 Bath of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this
23 Consent Judgment constitute or be construed as an admission by Bed Bath of any fact, finding,
24 conclusion, issue of issue of law, or violation of law, such being specifically denied by Bed Bath.
25 Bed Bath reserves all of its rights and defenses with regard to any claim by any party under
26 Proposition 65 or otherwise. However, this section shall not diminish or otherwise affect Bed Bath's
27 obligations, responsibilities and duties under this Consent Judgment.
28

1 **13. COUNTERPARTS; FACSIMILE SIGNATURES**

2 This Consent Judgment may be executed in counterparts and by facsimile, each of which
3 shall be deemed an original, and all of which, when taken together, shall constitute one and the same
4 document.

5 **14. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

6 Plaintiff agrees to comply with the reporting form requirements referenced in Health &
7 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall
8 present this Consent Judgment to the California Attorney General’s Office within two (2) days after
9 receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment will then
10 be served on the Attorney General’s Office at least forty-five (45) days prior to the date a hearing is
11 scheduled on such motion in the Superior Court for the City and County of San Francisco unless the
12 Court allows a shorter period of time.

13 **15. ADDITIONAL POST EXECUTION ACTIVITIES**

14 The Parties shall mutually employ their best efforts to support the entry of this Agreement as
15 a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
16 The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed motion is
17 required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties agree to file
18 a Joint Motion to Approve the Agreement (“Joint Motion”), the first draft of which Bed Bath’s
19 counsel shall prepare, within a reasonable period of time after the Execution Date (i.e., not to exceed
20 fourteen (14) days unless otherwise agreed to by the Parties’ counsel based on unanticipated
21 circumstances). Plaintiff’s counsel shall prepare a declaration in support of the Joint Motion which
22 shall, inter alia, set forth support for the fees and costs to be reimbursed pursuant to Section 4. Bed
23 Bath shall have no additional responsibility to Plaintiff’s counsel pursuant to C.C.P. § 1021.5 or
24 otherwise with regard to reimbursement of any fees and costs incurred with respect to the
25 preparation and filing of the Joint Motion and its supporting declaration or with regard to Plaintiff’s
26 counsel appearing for a hearing or related proceedings thereon.

27 **16. MODIFICATION**

28 This Consent Judgment may be modified only by: (1) written agreement of the Parties and

1 upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party as
2 provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney
3 General shall be served with notice of any proposed modification to this Consent Judgment at least
4 fifteen (15) days in advance of its consideration by the Court.

5 17. **AUTHORIZATION**

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

REED SMITH LLP
Attorney liability partnership licensed in the State of Delaware

9 **AGREED TO:**

AGREED TO:

10 Date: _____

10 Date: December 29, 2004

11 By: _____
12
13 Plaintiff Whitney R. Leeman, Ph.D.

11 By: [Signature]
12
13 Defendant Bed Bath & Beyond Inc.
14 Vice President - Corporate Counsel

15 **APPROVED AS TO FORM:**

APPROVED AS TO FORM:

16 Date: _____

16 Date: December 29, 2004

17 **CHANLER LAW GROUP**

REED SMITH LLP

18 By: _____
19
20 Clifford Chanler
21 Attorneys for Plaintiff
22 WHITNEY R. LEEMAN, Ph.D.

18 By: [Signature]
19
20 John E. Ditroe
21 Attorneys for Defendant
22 BED BATH & BEYOND INC.

23
24 **IT IS SO ORDERED.**

25
26 Date: _____

26 _____
27 **JUDGE OF THE SUPERIOR COURT**

REED SMITH LLP
A limited liability partnership limited in the State of Delaware

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upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party as provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney General shall be served with notice of any proposed modification to this Consent Judgment at least fifteen (15) days in advance of its consideration by the Court.

17. AUTHORIZATION

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

AGREED TO:

AGREED TO:

Date: 12/23/04

Date: _____

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

By: _____
Defendant Bed Bath & Beyond Inc.

APPROVED AS TO FORM:

APPROVED AS TO FORM:

Date: 12-28-04

Date: _____

CHANLER LAW GROUP
By: Cliff Chanler
Clifford Chanler
Attorneys for Plaintiff
WHITNEY R. LEEMAN, Ph.D.

REED SMITH LLP
By: _____
John E. Dittoe
Attorneys for Defendant
BED BATH & BEYOND INC.

IT IS SO ORDERED.

Date: _____

JUDGE OF THE SUPERIOR COURT

RELLD SMITH LLP
A limited liability partnership formed in the State of Delaware

Exhibit A

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Glassware with colored artwork, design and/or markings (containing lead) on their exterior surface, including, but not limited to:

- Portmeirion USA Botanic Garden sku 12371225
- Portmeirion USA Botanic Garden sku 12371233
- Portmeirion USA Botanic Garden sku 12371241
- Portmeirion USA Botanic Garden sku 12371250
- Portmeirion USA Botanic Garden sku 12371276
- Portmeirion USA Botanic Garden sku 10312256
- Portmeirion USA Botanic Garden sku 10459532
- Portmeirion USA Botanic Garden sku 10459559
- Portmeirion USA Botanic Garden sku 10617243
- Portmeirion USA Botanic Garden sku 10617251
- Portmeirion USA Botanic Garden sku 10312248

Other decorated glassware items in Portmeirion patterns, including, but not limited to: Botanic Garden, The Holly & Ivy, Pomona, Strawberry Fair, and Christmas Story.

- Ambiance Collections Tropical Hibiscus sku 12992483
- Ambiance Collections Tropical Hibiscus sku 12992491

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EXHIBIT B

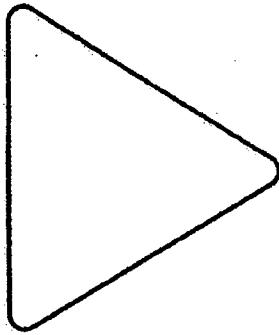
Combined Point of Sale Warnings [Yellow Triangle]

PROP 65

WARNING

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

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



displayed on or next to the product.

EXHIBIT C

Combined Point of Sale Warnings

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RE... SMITH LLP
A limited liability partnership formed in the State of Delaware

PROP 65 WARNING

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

The materials used as colored decorations on the exterior of the following glassware products sold in this store contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm: [List each manufacturer and pattern name for which a warning is given].

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

1 Daniel Bornstein, State Bar No. 181711
2 Stephen S. Sayad, State Bar No. 104866
3 Laralei S. Paras, State Bar No. 203319
4 PARAS LAW GROUP
5 655 Redwood Highway, Suite 216
6 Mill Valley, CA 94941
7 Tel: (415) 380-9222
8 Fax: (415) 380-9223

9 Clifford A. Chanler, State Bar No. 135534
10 CHANLER LAW GROUP
11 71 Elm Street, Suite 8
12 New Canaan, CT 06840
13 Tel: (203) 966-9911
14 Fax: (203) 801-5222
15 Attorneys for Plaintiff
16 WHITNEY R. LEEMAN, Ph.D

ENDORSED
FILED
San Francisco County Superior Court

JUN 3 2005

GORDON PARK-LI, Clerk
BY: GARTH SAYERS
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 IN AND FOR THE COUNTY OF SAN FRANCISCO
13 UNLIMITED CIVIL JURSDICTION

14 WHITNEY R. LEEMAN, Ph.D.

15 Plaintiff,

16 v.

17 ARC INTERNATIONAL NORTH
18 AMERICA, INC.; et al.,

19 Defendants.

Consolidated Case No. CGC-003-418025

[CONSOLIDATED]

~~[PROPOSED]~~ JUDGMENT PURSUANT TO
TERMS OF STIPULATION AND ORDER RE:
CONSENT JUDGMENT

Date: June 3, 2005

Time: 9:00 a.m.

Dept: 501

Judge: Hon. James McBride

21 WHITNEY R. LEEMAN, Ph.D.

22 Plaintiff,

23 vs.

24 BED BATH & BEYOND, INC., et al.,

25 Defendants.

No. CGC-03-422636

(Consolidated with No. CGC-03-418025)

27
28 **[PROPOSED] JUDGMENT PURSUANT TO TERMS OF STIPULATION AND
ORDER RE: CONSENT JUDGMENT**

1 In the above-entitled action, Plaintiff Whitney R. Leeman, Ph.D. and Defendant Bed
2 Bath and Beyond, Inc. having agreed through their respective counsel that judgment be
3 entered pursuant to the terms of the Stipulation and [Proposed] Order Re: Consent Judgment
4 entered into by the parties, and after issuing a Stipulation and Order Re: Consent Judgment
5 approving Proposition 65 settlement agreement on June 3, 2005,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code
7 of Civil Procedure section 664.5, judgment is entered in accordance with the terms of the
8 Order Approving Proposition 65 Settlement Agreement and Consent Judgment, between the
9 parties.

10 IT IS SO ORDERED.

11 Dated: JUN 3 2005

JAMES J. McBRIDE

Hon. James McBride
JUDGE OF THE SUPERIOR COURT

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28 **[PROPOSED] JUDGMENT PURSUANT TO TERMS OF STIPULATION AND
ORDER RE: CONSENT JUDGMENT**