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14 Attorneys for Plaintiff  
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24 PNS Stores, Inc.

25 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
26 IN AND FOR THE COUNTY OF SAN FRANCISCO  
27 UNLIMITED CIVIL JURISDICTION

28 WHITNEY R. LEEMAN, Ph. D.,

Plaintiff,

v.

BIG LOTS STORES, INC.; PNS STORES, INC.;  
and DOES 1 through 150,

Defendants.

Case No. CGC-04-437020

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

1 **1. INTRODUCTION**

2 1.1 **Plaintiff and Settling Defendant.** This Consent Judgment is entered into by and  
3 between plaintiff Whitney R. Leeman (hereafter “Dr. Leeman” or “Plaintiff”) and defendants Big  
4 Lots Stores, Inc, (hereafter “Big Lots”), PNS Stores, Inc. (hereafter “PNS”), (collectively  
5 "Defendants"). Plaintiff and Defendants are collectively referred to as the “Parties” and each  
6 party being a “Party.”

7 1.2 **Plaintiff.** Dr. Leeman represents that she is an individual residing in Sacramento,  
8 California, who seeks to promote awareness of exposures to toxic chemicals and improve human  
9 health by reducing or eliminating hazardous substances contained in consumer and industrial  
10 products.

11 1.3 **General Allegations.** Plaintiff alleges that Defendants have distributed and/or  
12 sold in the State of California glass and metal terrariums or greenhouses with materials that  
13 contain lead (and/or lead compounds) that are listed pursuant to the Safe Drinking Water and  
14 Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.*, also  
15 known as Proposition 65, to cause cancer and birth defects and other reproductive harm. Lead  
16 (and/or lead compounds) shall be referred to herein as “Listed Chemicals.”

17 1.4 **Product Descriptions.** The products that are covered by this Consent Judgment  
18 are defined as follows: glass and metal terrariums including, by way of example and without  
19 limitation, the specific products contained in the items listed at Exhibit A. Such products  
20 collectively are referred to herein as the “Products.”

21 1.5 **Notices of Violation.** Beginning on September 3, 2004, and November 24, 2004  
22 Dr. Leeman served Defendants and various public enforcement agencies with documents,  
23 entitled “60 Day Notice of Violation” (“Notice”) that provided Defendants and such public  
24 enforcers with notice that alleged that Defendants were in violation of Health & Safety Code  
25 § 25249.6 for failing to warn purchasers that the Products that it sold expose users in California  
26 to lead and/or lead compounds.

27 1.6 **Complaint.** On December 10, 2004, Dr. Leeman, acting in the interest of the  
28 general public in California, filed a complaint (hereafter referred to as the “Complaint” or the

1 “Action”) in the Superior Court in and for the County of San Francisco against Big Lots Stores,  
2 Inc, PNS Stores Inc., and Does 1 through 150, alleging violations of Health & Safety Code  
3 § 25249.6 for failure to warn of alleged exposures to one or more of the Listed Chemicals  
4 contained in certain products sold by Defendants.

5 1.7 **No Admission.** Defendants deny the material factual and legal allegations  
6 contained in Plaintiff’s Notices and Complaint and maintain that all Products that they have  
7 imported, distributed or offered for use or sale in California have been and are in compliance with  
8 all laws. Nothing in this Consent Judgment shall be construed as an admission by Defendants of  
9 any fact, finding, issue of law, or violation of law; nor shall compliance with this Consent  
10 Judgment constitute or be construed as an admission by Defendants of any fact, finding,  
11 conclusion, issue of law or violation of law. Defendants reserve all of their rights and defenses  
12 with regard to any claim or allegation including, but not limited to, those contained in Plaintiff’s  
13 Notice and Complaint. However, this section shall not diminish or otherwise affect the  
14 obligations, responsibilities and duties of Defendants under this Consent Judgment.

15 1.8 **Consent to Jurisdiction.** For purposes of this Consent Judgment only, the  
16 Parties stipulate that this Court has jurisdiction over the allegations of violations contained in the  
17 Complaint and personal jurisdiction over Defendants as to the acts alleged in the Complaint, that  
18 venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this  
19 Consent Judgment and to enforce the provisions thereof.

20 1.9 **Effective Dates.** For purposes of this Consent Judgment, the “Execution Date “  
21 shall be the date on which this Consent Judgment is executed by the Parties. The “Effective  
22 Date” shall be the date on which this Consent Judgment is approved by the Superior Court In  
23 and For the City and County of San Francisco.

24 **2. INJUNCTIVE RELIEF: PROPOSITION 65**

25 2.1 **WARNINGS AND REFORMULATION OBLIGATIONS**

26 (a) **Required Warnings.** After the Effective Date, Defendants shall not  
27 transmit to any retailer to sell or otherwise offer for sale in California any Products containing the  
28

1 Listed Chemicals, unless warnings are given in accordance with one or more provisions in  
2 subsection 2.2 below.

3 (b) **Exceptions.** The warning requirements set forth in subsections 2.1(a) and  
4 2.2 below shall not apply to:

5 (i) Products received by Defendants on or before December 31, 2005, the  
6 anticipated date on which the Court will approve this Consent Judgment.

7 (ii) Reformulated Products as defined in subsection 2.3 below.  
8

## 9 2.2 CLEAR AND REASONABLE WARNINGS

10 (a) **Product Labeling.** A warning is affixed to the packaging, labeling or  
11 directly to or on a Product by Defendants, their agents, or the manufacturer, importer, or  
12 distributor of the Product that states:

13 **WARNING: The materials used in this product contain lead,**  
14 **a chemical known to the State of California to**  
15 **cause birth defects and other reproductive**  
**harm. *Wash hands after handling.***

16 Warnings issued for Products pursuant to this subsection shall be prominently placed with  
17 such conspicuousness as compared with other words, statements, designs, or devices as to render  
18 it likely to be read and understood by an ordinary individual under customary conditions of use or  
19 purchase. Any changes to the language or format of the warning required by this subsection shall  
20 only be made following: (1) approval from the California Attorney General's Office, provided  
21 that written notice of at least fifteen (15) days is given to Plaintiff for the opportunity to comment;  
22 or (2) Court approval.

23 (b) **Point-of-Sale Warnings.** Defendants may execute their warning  
24 obligations, where applicable, through arranging for the posting of signs at their retail outlets in  
25 the State of California at which Products are sold, in accordance with the terms specified in  
26 subsections 2.2(b)(i) and 2.2(b)(ii) of the Consent Judgment .  
27  
28

1 (i) Point of Sale warnings may be provided through one or more signs  
2 posted at or near the point of sale or display of the Products that state:

3 **WARNING: The materials used in this product contain lead, a**  
4 **chemical known to the State of California to**  
5 **cause birth defects and other reproductive harm.**  
6 ***Wash hands after handling***

7 **or**

8 **WARNING The materials used in these products contain**  
9 **lead, a chemical known to the State of California**  
10 **to cause birth defects and other reproductive**  
11 **harm. *Wash hands after handling***

12 If the manufacturer, importer or distributor of a Product sold by Defendants has been  
13 authorized to use Proposition 65 warning language for Products pursuant to a prior court-  
14 approved Proposition 65 settlement agreement, Defendants may use the manufacturer, importer or  
15 distributor's court-approved warning language pursuant to this Consent Judgment if that language  
16 is substantially similar to the language contained in the warnings above. In order to use such  
17 warnings, the substantially similar court-approved language must have been approved for use for  
18 the same type of Product for which Defendants intend to use the warning (*e.g.*, glass and metal  
19 terrariums or greenhouses).

20 (ii) A point of sale warning provided pursuant to subsection 2.2(b)(i)  
21 shall be prominently placed with such conspicuousness as compared with other words, statements,  
22 designs, or devices as to render it likely to be read and understood by an ordinary individual under  
23 customary conditions of use or purchase and shall be placed or written in a manner such that the  
24 consumer understands to which Products the warnings apply so as to minimize if not eliminate the  
25 chances that an overwarning situation will arise. Any changes to the language or format of the  
26 warning required for Products by this subsection shall only be made following: (1) approval from  
27 the California Attorney General's Office, provided that written notice of at least fifteen (15) days  
28 is given to Plaintiff for the opportunity to comment; or (2) Court approval.



1 (a) In the event Defendants pay any penalty and the Consent Judgment is not  
2 thereafter approved and entered by the Court, Dr. Leeman shall return any penalty funds paid  
3 under this Agreement within fifteen (15) days of receipt of a written request from Defendants  
4 following notice of the issuance of the Court's decision.

5 (b) **Apportionment of Penalties Received.** After Court approval of this  
6 Consent Judgment pursuant to section 6, all penalty monies received shall be apportioned by  
7 Plaintiff in accordance with Health & Safety Code § 25192, with 75% of these funds remitted to  
8 the State of California's Office of Environmental Health Hazard Assessment and the remaining  
9 25% of these penalty monies retained by Plaintiff as provided by Health & Safety Code  
10 § 25249.12(d). Plaintiff shall bear all responsibility for apportioning and paying to the State of  
11 California the appropriate civil penalties paid in accordance with this section.

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

13 4.1 The Parties acknowledge that Plaintiff and her counsel offered to resolve this  
14 dispute without reaching terms on the amount of fees and costs to be reimbursed to them,  
15 thereby leaving this fee issue to be resolved after the material terms of the agreement had been  
16 settled. The Parties then attempted to (and did) reach an accord on the compensation due to  
17 Plaintiff and her counsel under the private attorney general doctrine codified at Code of Civil  
18 Procedure § 1021.5 for all work performed through the Effective Date of the Agreement. Under  
19 the private attorney general doctrine codified at Code of Civil Procedure § 1021.5, Defendants  
20 shall reimburse Plaintiff and her counsel for fees and costs, incurred as a result of investigating,  
21 bringing this matter to Defendants' attention, litigating and negotiating a settlement in the public  
22 interest. Defendants shall pay Plaintiff and her counsel \$18,000 for all attorneys' fees, expert  
23 and investigation fees, and litigation costs, including but not limited to all attorneys' fees and  
24 costs (including those incurred and to be incurred to obtain Court approval and the entry of this  
25 Consent Judgment), and other litigation expenses relating to this Action. The payment shall be  
26 made by Defendants on behalf of all Defendants, payable to the "Chanler Law Group" and shall  
27 be delivered to Plaintiff's counsel within 10 days of the Execution Date, at the following  
28 address:

1  
2 CHANLER LAW GROUP  
3 Attn: Clifford A. Chanler  
4 71 Elm Street, Suite 8  
New Canaan, CT 06840

5 4.2 **Return of Funds.** In the event that the Consent Judgment is not thereafter  
6 approved and entered by the Court, the Chanler Law Group shall return the full amount of the  
7 fees and costs paid under this Consent Judgment, by check payable to Defendants, within fifteen  
8 (15) days of receipt of a written request from counsel for Defendants following notice of the  
9 issuance of the Court's decision.

10 4.3 Except as specifically provided in this Consent Judgment, Defendants shall have  
11 no further obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with  
12 regard to the Products covered in this Action.

13 **5. RELEASE OF ALL CLAIMS**

14 5.1 **Plaintiff's Releases.** In further consideration of the promises and agreements  
15 herein contained, and for the payments to be made pursuant to sections 3 and 4, Plaintiff, on  
16 behalf of herself, her past and current agents, representatives, attorneys, successors and/or  
17 assignees, and in the interest of the general public, hereby waives all rights to institute or  
18 participate in, directly or indirectly, any form of legal action and release all claims, including,  
19 without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands,  
20 obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to,  
21 investigation fees and costs, expert fees and costs and attorneys' fees and costs) of any nature  
22 whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against  
23 Defendants and each of their, retailers, dealers, customers, owners, purchasers, users, parent  
24 companies, corporate affiliates, subsidiaries and their respective officers, directors, attorneys,  
25 representatives, shareholders, agents, and employees (collectively, "Defendants' Releasees")  
26 arising under Proposition 65, related to Defendants' or Defendants' Releasees' alleged failure to  
27 warn about exposures to or identification of Listed Chemicals contained in the Products.  
28



1 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and  
2 binding resolution of any violation of Proposition 65 that have been or could have been asserted  
3 in the Complaint against Defendants and the Defendants' Releasees for alleged failure to provide  
4 clear and reasonable warnings of exposure to or identification of Listed Chemicals in the  
5 Products.

6 In addition, Plaintiff, on behalf of herself, her attorneys, and their agents, waive all rights  
7 to institute or participate in, directly or indirectly, any form of legal action and releases all Claims  
8 against the Defendants' Releasees arising under Proposition 65 related to each of the Defendants'  
9 Releasees' alleged failures to warn about exposures to or identification of Listed Chemicals  
10 contained in the Products and for all actions or statements made by Defendants, the Defendants'  
11 Releasees, or their attorneys or representatives, in the course of responding to alleged violations  
12 of Proposition 65 by Defendants. Provided however, Plaintiff shall remain free to enforce the  
13 provisions of this Consent Judgment.

14 It is specifically understood and agreed that the Parties intend that Defendants'  
15 compliance with the terms of this Consent Judgment resolves all issues and liability, now and in  
16 the future (so long as Defendants comply with the terms of the Consent Judgment) concerning  
17 Defendants' and the Defendants' Releasees' compliance with the requirements of Proposition 65,  
18 as to the Listed Chemicals in the Products.

19 **5.2 Defendants' Release of Plaintiff.** Defendants waive all rights to institute any  
20 form of legal action against Plaintiff, or her attorneys or representatives, for all actions taken or  
21 statements made by Plaintiff and her attorneys or representatives, in the course of seeking  
22 enforcement of Proposition 65 in this Action.

## 23 **6. COURT APPROVAL**

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

1     **7. SEVERABILITY**

2             If, subsequent to Court approval of this Consent Judgment, any of the provisions of this  
3     Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
4     provisions remaining shall not be adversely affected.

5     **8. ATTORNEYS' FEES**

6             In the event of an action to enforce the terms of this Consent Judgment, the prevailing  
7     Party shall, except as otherwise provided herein, be entitled to recover reasonable and necessary  
8     costs and reasonable attorneys' fees incurred in that enforcement action.

9     **9. GOVERNING LAW**

10            The terms of this Consent Judgment shall be governed by the laws of the State of  
11     California without regard to its choice of law provisions. In the event that Proposition 65 is  
12     repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products  
13     specifically, then Defendants shall have no further obligations pursuant to this Consent Judgment  
14     with respect to, and to the extent that, those Products are so affected.

15     **10. ENFORCEMENT OF CONSENT JUDGMENT WITH REGARD TO RETAIL  
16     STORES IN CALIFORNIA**

17            10.1 Before moving to enforce the terms and conditions of Section 2 of this Consent  
18     Judgment against Defendants with respect to an alleged violation occurring at a retail store  
19     located in California, Plaintiff and others must follow the procedures set forth in subsections 10.2  
20     through 10.4.

21            10.2 In the event that Plaintiff and/or her attorneys, agents, assigns, or any other person  
22     acting in the public interest under Health & Safety Code §25249.7(d), (hereinafter "Notifying  
23     Person") identifies one or more retail stores in California owned or operated by Defendants at  
24     which Products are sold (hereinafter "retail outlet") for which the warnings required under  
25     subsection 2.2(a) or 2.2(b) of this Consent Judgment are not being given, such Notifying Person  
26     shall notify Defendants, in writing, of such alleged failure to warn (the "Notice of Breach"). The  
27     Notice of Breach shall be sent by first class mail, with proof of service, to the person(s) identified  
28     in Section 11 of this agreement, and must be served within sixty (60) days of the date the alleged

1 violation was observed. The Notice of Breach shall identify the date the alleged violation was  
2 observed and the retail outlet in question, and reasonably describe the nature of the alleged  
3 violation with sufficient detail to allow Defendants to determine the basis of the claim being  
4 asserted and to identify the Products to which those assertions apply.

5 10.3 In the event that the Notifying Person identifies a specific retail outlet, other than  
6 the specific one identified in subsection 10.2 of this Consent Judgment, not giving warnings for  
7 Products as required under subsections 2.2(a) or 2.2(b) of this Consent Judgment, such Notifying  
8 Person shall serve Defendants with another Notice of Breach in the manner described in  
9 subsection 10.2 and provide the information required in subsection 10.2.

10 The Notifying Person shall take no further action against Defendants unless the Notifying  
11 Person discovers, at least sixty (60) days after service of the Notice(s) of Breach served pursuant  
12 to subsections 10.2 and 10.3, another failure to warn for any Product at the same retail outlet(s)  
13 identified in the Notice(s) of Breach served pursuant to subsections 10.2 and 10.3.

14 **11. NOTICES**

15 All correspondence and notices required to be provided pursuant to this Consent Judgment  
16 shall be in writing and personally delivered or sent by: (1) registered, certified mail, return  
17 receipt requested, or (ii) overnight delivery to the representatives of each Party as listed below:

18 To Defendants:

19 Michael Schlonsky, Esq.  
20 Vice President, Risk Management and Administrative Services  
21 BIG LOTS STORES, INC.  
22 300 Phillipi Road  
Columbus, OH 43228-5311

23 With a copy to:

24 Michael E. Delehunt  
25 FOLEY & LARDNER LLP  
26 One Maritime Plaza, 6<sup>th</sup> Floor  
San Francisco, CA 94111-3409

1 To Plaintiff:

2 Clifford A. Chanler, Esq.  
3 CHANLER LAW GROUP  
4 71 Elm Street, Suite 8  
5 New Canaan, CT 06840

6 Either Party may, from time to time, pursuant to the methods prescribed above, specify a  
7 change of address to which all future notices and other communications shall be sent.

8 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

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

12 **13. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

13 Plaintiff agrees to comply with the reporting form requirements referenced in Health &  
14 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall  
15 present this Consent Judgment to the California Attorney General's Office within five (5) days  
16 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment  
17 will then be served on the Attorney General's Office at least forty-five (45) days prior to the date  
18 a hearing is scheduled on such motion in the Superior Court for the City and County of San  
19 Francisco unless the Court allows a shorter period of time.

20 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

21 The Parties shall mutually employ their best efforts to support the entry of this Agreement  
22 as a Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely  
23 manner. The Parties acknowledge that, pursuant to Health & Safety Code § 25249.7, a noticed  
24 motion is required to obtain judicial approval of this Consent Judgment. Accordingly, the Parties  
25 agree to file a Joint Motion to Approve the Agreement ("Joint Motion"), the first draft of which  
26 Defendants' counsel shall prepare, within a reasonable period of time after the Execution Date  
27 (*i.e.*, not to exceed thirty (30) days unless otherwise agreed to by the Parties' counsel based on  
28 unanticipated circumstances). Plaintiff's counsel shall prepare a declaration in support of the

1 Joint Motion which shall, inter alia, set forth support for the fees and costs to be reimbursed  
2 pursuant to Section 4. Defendants shall have no additional responsibility to Plaintiff's counsel  
3 pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and costs  
4 incurred with respect to the preparation and filing of the Joint Motion and its supporting  
5 declaration or with regard to Plaintiff's counsel appearing for a hearing or related proceedings  
6 thereon.

7 **15. MODIFICATION**

8 This Consent Judgment may be modified only by: (1) written agreement of the Parties  
9 and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party  
10 as provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney  
11 General shall be served with notice of any proposed modification to this Consent Judgment at  
12 least fifteen (15) days in advance of its consideration by the Court.

13 **16. AUTHORIZATION**

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

17  
18 AGREED TO:

AGREED TO:

19  
20 Date: 8/26/2005

Date: \_\_\_\_\_

21  
22 By: Whitney R. Leeman  
Plaintiff Whitney R. Leeman, Ph. D.

23 By: \_\_\_\_\_  
Defendant  
Big Lots Stores, Inc., and  
24 PNS Stores, Inc.

1 Joint Motion which shall, inter alia, set forth support for the fees and costs to be reimbursed  
2 pursuant to Section 4. Defendants shall have no additional responsibility to Plaintiff's counsel  
3 pursuant to C.C.P. § 1021.5 or otherwise with regard to reimbursement of any fees and costs  
4 incurred with respect to the preparation and filing of the Joint Motion and its supporting  
5 declaration or with regard to Plaintiff's counsel appearing for a hearing or related proceedings  
6 thereon.

7 **15. MODIFICATION**

8 This Consent Judgment may be modified only by: (1) written agreement of the Parties  
9 and upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party  
10 as provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney  
11 General shall be served with notice of any proposed modification to this Consent Judgment at  
12 least fifteen (15) days in advance of its consideration by the Court.

13 **16. AUTHORIZATION**

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

17  
18 AGREED TO:

AGREED TO:

19  
20 Date: \_\_\_\_\_

Date: 9/14/05

21  
22 By: \_\_\_\_\_  
Plaintiff Whitney R. Leeman, Ph. D.

By: [Signature]  
Defendant  
Big Lots Stores, Inc., and  
PNS Stores, Inc.

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APPROVED AS TO FORM:

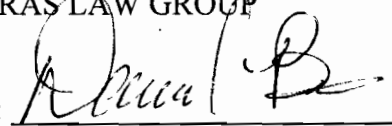
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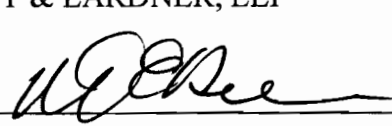
Date: 9/21/05

Date: 9-19-05

PARAS LAW GROUP

FOLEY & LARDNER, LLP

By: 

By: 

Daniel Bornstein  
Attorneys for Plaintiff  
WHITNEY R. LEEMAN, Ph. D.

Michael E. Delehunt  
Attorney for Defendants  
Big Lots Stores, Inc. and PNS Stores, Inc.

**IT IS SO ORDERED.**

Date: \_\_\_\_\_

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

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**Exhibit A**

All glass and metal greenhouses or terrariums, including but not limited to:

Greenhouse (Glass & Metal) 7.25", SKU No. 364008027

Greenhouse (Glass & Metal) 10.75", SKU No. 364008028

Greenhouse (Glass & Metal) 11", SKU No. 364008029