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American Greetings Corporation and Carlton Cards Retail, Inc.

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

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15 SUPERIOR COURT OF THE STATE OF CALIFORNIA
16 IN AND FOR THE COUNTY OF ALAMEDA, HAYWARD BRANCH
17 UNLIMITED CIVIL JURISDICTION
18

19 WHITNEY R. LEEMAN,) No. HG04147341
20 Plaintiff,)
21 v.) CONSENT JUDGMENT
22)
23 CARLTON CARDS RETAIL, INC.;)
AMERICAN GREETINGS)
CORPORATION; DOES 1 through 150,)
24 Defendants.)
25 _____)
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1 This Consent Judgment (“Agreement” or “Consent Judgment”) is entered into
2 by and between Whitney R. Leeman, Ph.D. (hereinafter “Leeman”), Carlton Cards
3 Retail, Inc. and American Greetings Corporation as of August 25, 2004 (the
4 “Effective Date”). The parties agree to the following terms and conditions:

5 **WHEREAS:**

6 1.0 **Introduction**

7 1.1 Plaintiff. Leeman is an individual residing in Sacramento,
8 California, who seeks to promote awareness of exposures to toxic chemicals and
9 improve human health by reducing or eliminating hazardous substances contained
10 in consumer and industrial products;

11 1.2 Defendants. Carlton Cards Retail, Inc. (“Carlton”) and American
12 Greetings Corporation (“AGC”) (sometimes collectively referred to herein as
13 “Defendants”), are engaged in the retail sale of greeting cards, social expression
14 items and various novelty items.

15 1.3 Notice. On or about April 25, 2003, Leeman served to the
16 Defendants and each appropriate public enforcement agency in Oakland,
17 California, a document entitled: “60-Day Notice of Intent to Sue Under Health &
18 Safety Code Section 22459.6.” The Notice alleges that Defendants were in violation
19 of California Health & Safety Code Section 22459.6. by virtue of they having sold
20 certain Tiffany-Style Lamps that contain lead or lead compounds (the “Listed
21 Chemical”), a substance known to the State of California to cause cancer and birth
22 defects (or other reproductive harm);

23 1.4 Covered Products. A list of such Tiffany Style Lamps that
24 Leeman alleges contain Listed Chemical, which are sold or offered for sale in
25 California and which are covered by this Agreement, is provided in Exhibit A (all
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1 such Defendants' products to be collectively referred to hereinafter as the
2 "Products");

3 1.5 Complaint. On March 24, 2004, Leeman filed a complaint
4 entitled *Whitney R. Leeman v. Carlton Cards Retail, Inc., American Greetings*
5 *Corporation, et al., Case Number HG04147341*, in the Alameda County Superior
6 Court, naming the Defendants as having violated the Business & Professions Code
7 §17200 and §17500 as well as Health & Safety Code §25249.6 on behalf of
8 individuals in California who allegedly have been exposed to the Listed Chemical,
9 listed pursuant to Proposition 65, contained in certain products that Defendants
10 offer for sale (the "Action").

11 2.0 Purpose Of Consent Decree. The Parties enter into this Stipulation to
12 Entry of Consent Judgment ("Consent Judgment") as a full and final resolution of
13 all claims and allegations that were or that could have been alleged by Plaintiff in
14 the Notice, Complaint and Action, and in order that the Parties may avoid
15 protracted litigation on such claims and, to the maximum extent permitted by law,
16 provide Defendant *res judicata* protection against future claims based on the same
17 or substantially similar allegations for the Products at issue. This Consent
18 Judgment is not and shall not be construed as an admission by Defendants of any
19 allegation or issue of fact or law asserted in the Notice, Complaint, or Action.
20 Defendants expressly deny any alleged violation of Proposition 65 and/or Business
21 and Professions Code section 17200 *et seq.* For the purpose of avoiding prolonged
22 litigation, the parties enter into this Consent Judgment as a full settlement of all
23 claims that were or could have been raised in the Complaint based upon the facts
24 alleged therein, or which could have been raised in the Action arising out of the
25 facts alleged therein. However, this paragraph shall not diminish or otherwise
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1 affect the obligations, responsibilities, and duties of Defendants under this
2 Agreement.

3 3.0 Jurisdiction. For purposes of this Consent Judgment, the Parties
4 stipulate that this Court has jurisdiction over the allegations contained in the
5 Complaint and personal jurisdiction over Defendants as to the conduct alleged.
6 The Parties further stipulate that venue is proper in the County of Alameda and
7 that the Court may enter this Consent Judgment as a full and final settlement of
8 the Action with respect to Defendants, and all claims that were or could have been
9 asserted by Plaintiff against Defendants.

10 4.0 Entry of Consent Judgment

11 4.1 Prompt Entry. The Parties hereby request that, pursuant to the
12 relevant statutory provisions, the Court enter this Consent Judgment as a final
13 resolution of the Action between Plaintiff and Defendants. Upon entry of the
14 Consent Judgment, the Parties waive their respective rights to a hearing or trial on
15 the allegations of the Complaint.

16 4.2 Stipulation Void Absent Entry Of Consent Judgment.

17 Notwithstanding anything in this Stipulation, in the event that the Court does not
18 enter judgment in accordance with the terms of this Consent Judgment within 12
19 months, then (a) this Stipulation shall be null and void and shall be inadmissible
20 for any purpose in any proceeding relating in any way to the allegations of the
21 Notice or Complaint and/or to this Action; (b) Defendant shall not be deemed to
22 have made any admission of any kind with respect to the Notice, the Action, or this
23 Stipulation; and (c) the Parties shall retain all rights, remedies, and defenses that
24 were available to them prior to entering this Stipulation.
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1 5.0 Injunctive Relief

2 5.1 Product Warnings.

3 (a) No later than thirty days after the Effective Date of this
4 Consent Judgment, neither Carlton nor AGC shall offer any Products for sale in
5 California unless they are reformulated pursuant to the conditions of Paragraph
6 5.0(c), or bear the following warning statement:

7 **"WARNING: This product contains LEAD, a substance**
8 **known to the State of California to cause**
9 **birth defects (or other reproductive**
 harm).

10 (b) The warning stated above may be placed on: (1) a product
11 label; (2) on the accompanying packaging as a sticker; or (3) on a store sign
12 sufficiently near the Products' point of sale so that it is likely to be read by an
13 ordinary individual under customary conditions of purchase for the Products. For
14 purposes of this Consent Judgment, a warning sticker placed on product
15 packaging that is not available to the consumer before purchase, or on product
16 packaging that does not accompany the Products when purchased, is not
17 reasonably calculated to transmit the requisite warning and, thus, may not be used
18 to comply with this paragraph.

19 (c) Notwithstanding any other provision of this Agreement, no
20 warning for exposure to lead shall or need be provided by Carlton or AGC for: (1)
21 any Product containing 0.1 percent (.1%) lead or less (by weight) in each material
22 used in the Products (such as solder or came); (2) any Product, for which the
23 reasonably foreseeable exposure to the Listed Chemical from the product is
24 indirect, that yields a result of less than 5 micrograms (ugs) of lead by a Ghost
25 Wipe™ test conducted on all metal portions of the perimeter or other surface area
26 of the Product, performed as outlined in NIOSH method of detection 9100; or (3)

1 any Product, for which the reasonably foreseeable exposure to the Listed Chemical
2 from the product is direct, that yields a result of less than .5 micrograms (ugs) of
3 lead by a Ghost Wipe™ test conducted on all metal portions of the perimeter or
4 other surface area of the Product, performed as outlined in NIOSH method of
5 detection 9100.

6 5.2 Reformulation, Inventory and Future Sales Carlton and AGC
7 represent that they withdrew the Products from inventory in California after
8 receiving plaintiff's 60-day notice and, to the best of its knowledge, no longer has
9 any of the Products in its inventory or any of its retail outlets in California. Carlton
10 and AGC agree that they will not order any additional quantities of the Products,
11 for purposes of selling the Products in any of its California stores, unless each
12 Product, as shipped, is lead-free (containing 0.1% lead or less by weight) in the
13 came.

14 6.0 Payment Pursuant To Health & Safety Code §25249.7(b). Pursuant to
15 Health & Safety Code §25249.7(b), Carlton, on behalf of itself and AGC shall deliver
16 a check for a civil penalty of \$6,000 made payable to "Chanler Law Group
17 ("Chanler") In Trust For Whitney R. Leeman" within 5 business days of the Effective
18 Date. All penalty monies shall be apportioned by Leeman in accordance with
19 Health & Safety Code §25192, with 75% of these funds remitted to the Office of
20 Environmental Health Hazard Assessment and the remaining 25% of these penalty
21 monies retained by Plaintiff as provided by Health and Safety Code § 25249.12(d).

22 7.0 Reimbursement of Fees And Costs. The parties acknowledge that
23 Leeman and his counsel offered to resolve this dispute which resolution includes
24 an agreement on the amount of fees and costs to be reimbursed to them, under
25 the private attorney general doctrine codified at C.C.P. §1021.5 for all work
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1 performed through the Effective Date of the Agreement.

2 Under the private attorney general doctrine codified at C.C.P. §1021.5,
3 AGC shall reimburse Leeman and her counsel for her fees and costs, incurred as a
4 result of investigating, bringing this matter to Carlton's and AGC's attention,
5 litigating and negotiating a settlement in the public interest. Carlton, on behalf of
6 itself and AGC, shall pay Leeman and her counsel the total amount of \$29,000, for
7 all attorneys' fees, expert and investigation fees, and litigation costs, on or within 5
8 business days of the Effective Date.

9 7.1 Except as specifically provided in this Consent Judgment,
10 neither Carlton nor AGC shall have any further obligation with regard to
11 reimbursement of plaintiff's attorney's fees and costs, including for any proceedings
12 to obtain approval of this Consent Judgment, and each party shall bear its own
13 costs and attorneys fees.

14 In the event that any third party, including the Attorney General or
15 any other public enforcer, objects or otherwise comments to one or more provisions
16 of this Agreement, Carlton and AGC agree to undertake best efforts to satisfy such
17 concerns or objections and support the terms of this Agreement.

18 8.0 Post-Execution Activities. The Parties acknowledge that, pursuant to
19 Health & Safety Code §25249.7, a noticed motion is required to obtain judicial
20 approval of this Agreement. Accordingly, the Parties agree to use their best efforts
21 to file a *Joint Motion to Approve the Agreement* ("Joint Motion"), the first draft of
22 which CARLTON CARDS shall prepare, within a reasonable period of time after
23 execution of this Agreement (i.e., not to exceed fourteen (14) days unless otherwise
24 agreed to by Leeman's counsel based on unanticipated circumstances). Leeman's
25 counsel shall prepare a declaration in support of the Joint Motion which shall, *inter*
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1 *alia*, set forth support for the fees and costs to be reimbursed pursuant to
2 Paragraph 3. CARLTON CARDS shall have no additional responsibility to Leeman
3 or Leeman's counsel pursuant to C.C.P. §1021.5 or otherwise with regard to
4 reimbursement of any fees and costs incurred with respect to the preparation and
5 filing of the Joint Motion and its supporting declaration or with regard to Leeman's
6 counsel appearing for a hearing or related proceedings thereon.

7 9.0 Leeman's Release of Carlton and AGC. Leeman, by this Agreement, on
8 behalf of herself, her agents, representatives, attorneys, assigns, and in the interest
9 of the general public ("Releasing Parties"), waives all rights to institute or
10 participate in, directly or indirectly, any form of legal action, and releases all
11 claims, liabilities, obligations, losses, costs, expenses, fines, penalties, fees, and all
12 rights to damages, restitution, injunctive relief, and any other form of relief,
13 whether legal or equitable (collectively the "Claims"), against Carlton and AGC and
14 their directors, officers, employees, parents, subsidiaries, customers, successors
15 and assigns, whether under Proposition 65, the Business & Profession Code
16 §17200 et seq., Business & Profession Code §17500 et seq., or other
17 constitutional, statutory or common law Claims based solely on their alleged failure
18 to warn about exposure to the Listed Chemical contained in any of the Products.
19 This Agreement is a full, final, and binding resolution between Leeman, on behalf
20 of herself and in the interest of the general public, and Carlton and AGC (and the
21 above named parties), of any violation of Proposition 65, Business & Professions
22 Code §§ 17200 or 17500 or any other claim that was or could have been asserted
23 based on alleged failure to warn for exposure to lead in the Products (collectively
24 the "Released Claims"), or other facts alleged in the Complaint. The parties intend
25 that compliance with this Agreement to resolve any issue now, in the past, or in the
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1 future concerning the Products' past and present, and future (up to the date of
2 compliance established in Paragraph 5, above, and in the future so long as Carlton
3 and AGC comply with this Agreement) compliance with Proposition 65 as such
4 compliance pertains to the Products at issue. In addition, Leeman, on behalf of
5 herself, her attorneys, and her agents, waives all rights to institute any form of
6 legal action against Carlton and AGC and their attorneys or representatives, for all
7 actions or statements made by Carlton and AGC or their attorneys or
8 representatives, in the course of responding to violations of Proposition 65 or
9 Business & Profession Code §17200 and §17500 by Carlton and AGC alleged in the
10 Complaint.

11 10.0 Carlton and AGC's Release of Leeman. Carlton and AGC, by this
12 Agreement, waive all rights to institute any form of legal action against Leeman and
13 her attorneys or representatives, for all actions or statements made by Leeman or
14 her attorneys or representatives, in the course of seeking enforcement of
15 Proposition 65 or Business & Profession Code §17200 and §17500 against Carlton
16 and AGC in this litigation. Provided, however, that Carlton and AGC shall remain
17 free to institute any form of legal action to enforce the provisions of this Consent
18 Judgment.

19 11.0 Court Approval. This Consent Judgment shall be null and void if, for
20 any reason, it is not approved and entered by the Court within one year after it has
21 been fully executed by all Parties, in which event any monies that have been
22 provided to Plaintiff or his counsel pursuant to Sections 6.0 and 7.0 above, shall be
23 refunded within fifteen (15) days.

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1 12.0. Severability. In the event that any of the provisions of this Agreement
2 is held by a court to be unenforceable, the validity of the enforceable provisions
3 shall not be adversely affected.

4 13.0 Attorney's Fees. In the event that a dispute arises with respect to any
5 provision(s) of this Agreement (including, but not limited to, disputes arising from
6 payments to be made under this Agreement), reasonable attorneys' fees incurred
7 from the resolution of such dispute shall be available to the prevailing party. This
8 provision, however, shall not apply to the procedure set forth in Paragraphs 4.0.

9 14.0 Governing Law. The terms of this Agreement shall be governed by the
10 laws of the State of California.

11 15.0 Notices. All correspondence to Leeman shall be mailed to:

12 Laralei C. Schmohl, Esq.
13 CHANLER LAW GROUP
14 655 Redwood Highway, Suite 216
15 Mill Valley, California 94941
16 Tel: (415) 380-9222
17 Fax: (415) 380-9233

18 All correspondence to Carlton and AGC shall be mailed to:

19 Michelle B. Creger, Esq.
20 Assistant General Counsel
21 American Greetings Corporation
22 One American Road
23 Cleveland, Ohio 44414-2398

24 With a copy to:

25 John M. Riccione, Esq.
26 Aronberg Goldgehn Davis & Garmisa
27 One IBM Plaza, Suite 3000
28 Chicago, Illinois 60611
29 Tel: (312) 828-9600
30 Fax: (312) 828-9635

31 16.0 Compliance With Reporting Requirements (Health & Safety Code
32 §25249.7(f)). The parties acknowledge that the reporting provisions of Health &

1 Safety Code § 25249.7(f) apply to this Consent Judgment. Counsel for Leeman
2 shall comply with that Paragraph by submitting the required reporting form to, and
3 serving a copy of this Consent Judgment on, the California Attorney General's
4 Office when noticing the *Motion to Approve* hearing.

5 17.0 Duties Limited to California. This Consent Judgment shall have no
6 effect on Products sold by Carlton and AGC for use outside the State of California.

7 18.0 Entire Agreement. This Consent Judgment contains the sole and
8 entire agreement and understanding of the parties with respect to the entire
9 subject matter hereof, and any and all prior discussions, negotiations, commitment
10 and understandings related hereto. No representations, oral or otherwise, express
11 or implied, other than those contained herein have been made by any party hereto.
12 No other agreements not specifically referred to herein, oral or otherwise, shall be
13 deemed to exist or to bind any of the parties.

14 19.0 Modification. This Consent Judgment may be modified only upon
15 written agreement of the parties and upon entry of a modified Consent Judgment
16 by the Court thereon, or upon motion of any party as provided by law and upon
17 entry of a modified Consent Judgment by the Court.

18 20.0 Counterparts and Facsimile. This Agreement may be executed in
19 counterparts and facsimile, each of which shall be deemed an original, and all of
20 which, when taken together, shall constitute one and the same document.

21 21.0 Authorization. The undersigned are authorized to execute this
22 Agreement on behalf of their respective parties and have read, understood and
23 agree to all of the terms and conditions of this Agreement.

24 22.0 Binding Effect. This Consent Judgment shall inure to the benefit of,
25 and shall be binding upon, the Parties and their respective agents, alter egos,
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1 attorneys, directors, divisions, employees, heirs, legal predecessors, licensees,
2 officers, parent companies, partners, representatives, shareholder, subsidiaries,
3 successors, and any trustee or other officer appointed in the event of bankruptcy.

4 23.0 No Previous Assignment. Plaintiff represents and warrants that it has
5 not previously assigned or transferred, or purported to assign or transfer, to any
6 third party any Released Claim.

7 24.0 No Admissions. This Consent Judgment represents a settlement of
8 disputed claims and has been reached by the Parties to avoid the costs of
9 prolonged litigation and to ensure that the objectives of Proposition 65 are
10 expeditiously carried out. No Party admits any allegation or issue of fact or law
11 addressed herein or set forth in the Notice, Complaint or Action, and Defendant
12 expressly denies any alleged violation of Proposition 65 and/or the Unfair
13 Competition Act. The settlement of claims herein shall not be deemed to be an
14 admission or concession of liability or culpability by any Party at any time for any
15 purpose. Neither this Consent Judgment, nor any document referred to herein,
16 nor any action taken to carry out this Consent Judgment shall be construed as
17 giving rise to any presumption or inference of admission or concession by
18 Defendant, or of any fault, wrongdoing or liability whatsoever. Neither this
19 Consent Judgment, nor any of its terms or provisions, nor any of the negotiations
20 or other proceedings connected with it, shall be referred to, offered as evidence or
21 received in evidence in any pending or future civil, criminal or administrative
22 action or proceeding, except in a proceeding to enforce this Consent Judgment or
23 to defend against the assertion of any Released Claims or liability, or as otherwise
24 required by law.
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1 25.0 Representation. The Parties acknowledge and warrant that they have
2 been represented by counsel of their own choosing through all negotiations which
3 preceded the execution of this Agreement.

4 26.0 Authority To Stipulate. Each signatory to this Consent Judgment
5 individually certifies and warrants that he or she is authorized to enter into this
6 Consent Judgment on behalf of the Party he or she represents, and to bind that
7 Party with respect to the matters contained herein.

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AGREED TO:

AGREED TO:

DATE: 8/23/04

DATE: _____

CARLTON CARDS RETAIL, INC. and
AMERICAN GREETINGS CORPORATION
DEFENDANTS

Whitney R. Leeman
Whitney R. Leeman, Ph.D.
PLAINTIFF

By: _____
Michelle B. Creger

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: 8/23/04

DATE: _____

Clifford A. Chanler
Clifford A. Chanler
Attorneys for Plaintiff
Whitney R. Leeman, Ph.D.

John M. Riccione
Attorneys for Defendants
CARLTON CARDS RETAIL, INC.
and AMERICAN GREETINGS
CORPORATION

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AGREED TO:

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DATE: _____

DATE: 8/23/04

CARLTON CARDS RETAIL, INC. and
AMERICAN GREETINGS CORPORATION
DEFENDANTS

Whitney R. Leeman, Ph.D.
PLAINTIFF

By: Michelle B Creger
Michelle B. Creger

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: _____

DATE: 8/24/04

Clifford A. Chanler
Attorneys for Plaintiff
Whitney R. Leeman, Ph.D.

John M. Riccione
John M. Riccione
Attorneys for Defendants
CARLTON CARDS RETAIL, INC.
and AMERICAN GREETINGS
CORPORATION

#326556

Exhibit A

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PRODUCTS

Tiffany-Style Lamps
(Triangular and round)
including Carlton Cards Tiffany Lamp*
(#090000 06863 6/#2-34-228A and B)
SKU # 215037-9 and 215038-7

ALLEGED TOXINS

Lead and lead compounds.

*This specifically identified example of the type of product subject to this Consent Judgment is not meant to be an exhaustive or comprehensive list of each allegedly offending product covered herein.

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AGREED TO:

AGREED TO:

DATE: 8/23/04

DATE: _____

CARLTON CARDS RETAIL, INC. and
AMERICAN GREETINGS CORPORATION
DEFENDANTS

Whitney R. Leeman
Whitney R. Leeman, Ph.D.
PLAINTIFF

By: _____
Michelle B. Creger

APPROVED AS TO FORM:

APPROVED AS TO FORM:

DATE: _____

DATE: _____

Clifford A. Chanler
Attorneys for Plaintiff
Whitney R. Leeman, Ph.D.

John M. Riccione
Attorneys for Defendants
CARLTON CARDS RETAIL, INC.
and AMERICAN GREETINGS
CORPORATION

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