

1 Gregory M. Sheffer (SBN 173124)
Laralei Schmohl (SBN 203319)
2 SHEFFER & CHANLER LLP
ATTORNEYS AT LAW
3 160 Sansome Street, 2nd Floor
San Francisco, California 94104
4 Telephone: (415) 434-9111
Facsimile: (415) 434-9115

5 Attorneys for Plaintiff
6 WHITNEY R. LEEMAN, Ph.D.

7 Ann G. Grimaldi (SBN 160893)
Eric S. C. Lindstrom (SBN 197063)
8 MCKENNA LONG & ALDRIDGE LLP
Spear Street Tower, 35th Floor
9 One Market
San Francisco, California 94105
10 Telephone: (415) 267-4000
Facsimile: (415) 267-4198

11 Attorneys for Defendant
12 THE DISCOVERY CHANNEL STORE, INC.

13
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA
15 IN AND FOR THE COUNTY OF SAN FRANCISCO

16
17 WHITNEY R. LEEMAN, Ph.D.,

18 Plaintiff,

19 vs.

20 DISCOVERY CHANNEL STORE, INC., a
subsidiary of DISCOVERY
21 COMMUNICATIONS, INC., and DOES 1
through 150,

22 Defendants.
23

CASE NO. CGC-03-418037

STIPULATION AND [PROPOSED]
ORDER RE CONSENT JUDGMENT

1 This Stipulation and [Proposed] Order Re: Consent Judgment ("Agreement" or "Consent
2 Judgment") is entered into by and between plaintiff Whitney R. Leeman, Ph.D. ("Dr. Leeman")
3 and defendant The Discovery Channel Store, Inc. ("DCS") on December 11, 2003 (the
4 "Effective Date"). Dr. Leeman and DCS are collectively referred to herein as the "Parties" and
5 hereby agree to the following terms and conditions:

6 **WHEREAS:**

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

10 B. DCS has distributed and sold a kit ("Sleep Well Tonight") that contains
11 glassware products with colored designs on the exterior with materials that contain lead (or lead
12 compounds) (the "Listed Chemicals"). DCS represents that, in response to Dr. Leeman's
13 investigation and enforcement activities, it no longer sells Sleep Well Tonight in California;

14 C. On February 7, 2003, Dr. Leeman first served DCS and other public enforcement
15 agencies with a document entitled "60 Day Notice of Violation" which provided DCS and such
16 public enforcers with notice that DCS was allegedly in violation of Health & Safety Code §
17 25249.6 for allegedly failing to warn purchasers that certain glassware products it sells in
18 California expose users to one or more Listed Chemicals (the "Notice");

19 D. On March 6, 2003, Dr. Leeman filed, but did not serve on DCS, a complaint for
20 restitution and injunctive relief entitled Whitney R. Leeman, Ph.D. v. Discovery Channel Store,
21 Inc. San Francisco County Superior Court Case Number CGC-03-418037, naming DCS as a
22 defendant and alleging violations of Business & Professions Code § 17200 and Business &
23 Professions Code § 17500 on behalf of individuals in California who allegedly have been
24 exposed to one or more Listed Chemicals contained in certain products (the "Complaint");

25 E. On April 16, 2003, Dr. Leeman filed, and subsequently served on DCS, the first
26 amended complaint for restitution, injunctive relief, and civil penalties naming DCS as a
27 defendant and alleging violations of Health & Safety Code § 25249.6 on behalf of individuals in
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1 California who allegedly have been exposed to one or more Listed Chemicals contained in
2 certain products (the "Amended Complaint"); and

3 F. This Consent Judgment resolves claims that are denied and disputed. The Parties
4 intend this Consent Judgment to be a full and final adjudication of all claims that were or could
5 be asserted in this action based upon the matters alleged in the Notice, Complaint and Amended
6 Complaint as set forth herein. A description of the products which are covered by this Consent
7 Judgment is provided in the Notice, attached hereto as Exhibit A (the "Products"). Nothing in
8 this Consent Judgment shall be construed as an admission by DCS of any fact, finding,
9 conclusion, issue of law, or violation of law; nor shall compliance with this Agreement
10 constitute or be construed as an admission by DCS of any fact, finding, conclusion, issue of law,
11 or violation of law. However, this Paragraph shall not diminish or otherwise affect the
12 obligations, responsibilities, and duties of the Parties under this Agreement.

13 **NOW THEREFORE, DR. LEEMAN AND DCS HEREBY STIPULATE AND AGREE AS**
14 **FOLLOWS:**

15 1. **Product Warnings.** DCS agrees that it will not knowingly sell any Products
16 containing the Listed Chemicals in the State of California unless such Products comply with
17 Paragraphs 1.1 or 1.2 below:

18 1.1 Beginning within thirty (30) days after the Effective Date, for all Products
19 sold in DCS's California retail outlet stores, the following warning statement shall be given for
20 the Products on the Products' packaging, or at or near their point of sale or display:

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

1 The warning statement shall be prominently placed with such conspicuousness as
2 compared with other words, statements, designs, or devices as to render it likely to be read and
3 understood by an ordinary individual under customary conditions of purchase.

4 The sign attached as Exhibit B hereto may be used for this purpose if warnings are to be
5 provided via store signage. However, this sign must be sufficiently close in proximity to the
6 Products so the consumer is made aware that the sign specifically applies to those glassware
7 products that contain lead, and does not apply to those glassware products designed with lead
8 free materials. Any changes to the language, format, size or posting location of the warning
9 required by this Paragraph shall only be made after: 1) DCS provides written notice of the
10 proposed changes to counsel to Dr. Leeman at least fifteen (15) days before such proposed
11 changes are served on the California Attorney General's Office and 2) Dr. Leeman or the
12 California Attorney General's Office approves of the proposed changes.

13 The label attached as Exhibit C hereto may be used for this purpose if warnings are
14 provided via labeling. The labels may be affixed to the Product's packaging provided that the
15 packaging is available to the plain view of the consumer prior to purchase and the label has at
16 least the same size and contains the same language and format as that appearing on Exhibit C.
17 Any changes to the language, format, size or location of the warning required by this Paragraph
18 shall only be made after: 1) DCS provides written notice of the proposed changes to counsel to
19 Dr. Leeman at least fifteen (15) days before such proposed changes are served on the California
20 Attorney General's Office and 2) Dr. Leeman or the California Attorney General's Office
21 approves of the proposed changes.

22 1.2 The warnings required pursuant to Paragraphs 1 and 1.1 above shall not be
23 required for Products which:

24 (a) if the painted decoration is solely on the exterior of the Product exclusive of the top 20
25 millimeters of the ware (i.e., below the exterior portion of the lip and rim area as defined by
26 American Society of Testing and Materials Standard Test Method C927-99, hereinafter the
27 "Lip and Rim Area"), produce either a nondetectable test result or a test result no higher
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1 than 1.0 micrograms (ug) of lead (depending on whether flame AAS with a level of
2 quantification of at least 100 parts per billion or graphite furnace AAS is applied for the
3 analysis, respectively; however, DCS may only utilize flame AAS to meet the foregoing
4 requirement if it is not commercially reasonable for it to use graphite furnace AAS) using a
5 Ghost Wipe TM test applied on painted portions of the surface of the Product performed as
6 outlined in NIOSH method no. 9100; or

7 (b) if the painted decoration extends into the exterior Lip and Rim Area or the interior (food
8 contact surface) of the Product, a test result acceptable under Subparagraph (a) above, and
9 (1) a result of 0.5 micrograms/milliliter (ug/ml) of lead or less using ASTM method C 927-
10 99 with respect to any decoration in the Lip and Rim Area and/or (2) a result of 0.1 parts per
11 million (ppm) of lead or less using AOAC/ASTM method 973.32 with respect to any
12 decoration on the interior (food contact surface) if the Product is holloware or a result of
13 0.226 ppm of lead or less using AOAC/ASTM method 973.32 with respect to any
14 decoration on the interior (food contact surface) if the Product is flatware; or
15 (c) utilize paints on all decorations containing four one hundredths of one percent (0.04%)
16 lead by weight or less (as measured by a sample size of the paint measuring approximately
17 50-100 mg) and contain no painted decoration within any part of the interior (food contact
18 surface) of the Product or in the Lip and Rim Area of the Product.

19 Products satisfying the conditions of this Paragraph are hereinafter referred to as "Reformulated
20 Products."

21 **2. Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant to Health
22 & Safety Code § 25249.7(b), DCS shall pay \$21,900 in civil penalties no later than 10 days after
23 the Effective Date of this Agreement. The penalty payment specified above is to be made
24 payable to "Sheffer & Chanler LLP In Trust For Whitney R. Leeman." In the event that DCS
25 pays any penalty and the Consent Judgment is not thereafter approved and entered by the Court,
26 Dr. Leeman shall return any penalty funds paid under this Paragraph within fifteen (15) days of
27 receipt of a written request from DCS following notice of issuance of the Court's decision. In
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1 the event the Consent Judgment is entered by the Court, those penalty monies received shall be
2 apportioned by Dr. Leeman in accordance with Health & Safety Code § 25192, with 75% of
3 these funds remitted to the State of California's Office of Environmental Health Hazard
4 Assessment.

5 **3. Reimbursement Of Attorneys' Fees And Costs.** The Parties acknowledge that
6 Dr. Leeman and her counsel offered to resolve this dispute without reaching terms on the
7 amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved
8 after the material terms of the agreement had been settled. DCS then expressed a desire to
9 resolve the fee and cost issue shortly after the other settlement terms had been finalized. The
10 Parties then attempted to (and did) reach an accord on the compensation due to Dr. Leeman and
11 her counsel under the private attorney general doctrine codified at Code of Civil Procedure §
12 1021.5 for all work performed through the Effective Date of the Agreement. Under the private
13 attorney general doctrine codified at Code of Civil Procedure section 1021.5, DCS shall
14 reimburse Dr. Leeman and her counsel for fees and costs, incurred as a result of investigating,
15 bringing this matter to DCS's attention, litigating and negotiating a settlement in the public
16 interest. DCS shall pay Dr. Leeman and her counsel \$34,500 for all attorneys' fees, expert and
17 investigation fees, and litigation costs incurred through the anticipated date that the court
18 approval of this Agreement has been reported to the California Attorney General's Office.
19 Payments made under this Paragraph shall be made no later than 10 days after the Effective
20 Date. Payment should be made payable to "Sheffer & Chanler LLP." In the event that DCS
21 pays any funds pursuant to this Paragraph and the Consent Judgment is not thereafter ultimately
22 approved and entered by the Court, Dr. Leeman shall, upon DCS's written request, return any
23 funds paid under this Paragraph within fifteen (15) days of effective written notice of the
24 Court's decision.

25 **4. Post-Execution Activities.** The Parties acknowledge that, pursuant to Health &
26 Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this
27 Agreement. Accordingly, the Parties agree to use their best efforts to file a Joint Motion to
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1 Approve the Agreement ("Joint Motion"), the first draft of which DCS shall prepare, within a
2 reasonable period of time after execution of this Agreement (i.e., not to exceed fourteen (14)
3 days unless otherwise agreed to by Dr. Leeman's counsel based on unanticipated
4 circumstances). DCS shall have no additional responsibility to Dr. Leeman or Dr. Leeman's
5 counsel pursuant to C.C.P. §1021.5 or otherwise with regard to reimbursement of any fees and
6 costs incurred with respect to the preparation and filing of the Joint Motion and its supporting
7 declaration or with regard to Dr. Leeman's counsel appearing for a hearing or related
8 proceedings thereon. If Dr. Leeman believes that a joint motion cannot be filed in a timely
9 fashion after the initial fourteen (14) day period, she may file the Motion unilaterally.

10 **5. Dr. Leeman's Release Of DCS.** Dr. Leeman, by this Agreement, on behalf of
11 herself, her agents, representatives, attorneys, assigns and in the interest of the general public,
12 waives all rights to institute or participate in, directly or indirectly, any form of legal action, and
13 releases all claims, liabilities, obligations, losses, costs, expenses, fines and damages, against
14 DCS and its respective distributors, customers, directors, officers, employees, parents, corporate
15 affiliates (such as sister companies within the same corporate family), and the successors and
16 assigns of any of them, whether under Proposition 65 or the Business & Profession Code
17 § 17200 et seq. or § 17500 et seq. based on the alleged failure to warn about exposure to the
18 Listed Chemicals contained in Sleep Well Tonight. Dr. Leeman, by this Agreement, on behalf
19 of herself, her agents, representatives, attorneys, and assigns, also waives all rights to institute or
20 participate in, directly or indirectly, any form of legal action, and releases all claims, liabilities,
21 obligations, losses, costs, expenses, fines and damages, against DCS and its respective
22 distributors, customers, directors, officers, employees, parents, corporate affiliates (such as
23 sister companies within the same corporate family), and the successors and assigns of any of
24 them, under Proposition 65 or the Business & Profession Code § 17200 et seq. or § 17500 et
25 seq. based on the alleged failure to warn about exposure to Listed Chemicals in association with
26 Sleep Well Tonight. The releases provided for by this Paragraph shall not extend to any
27 manufacturer or licensee of Sleep Well Tonight.

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1 The parties intend that compliance with this Agreement shall resolve any issue now, in
2 the past, or in the future concerning Sleep Well Tonight's past and present, and future (up to the
3 date of compliance established in Paragraph 1, above, and in the future so long as DCS complies
4 with this Agreement) compliance with Proposition 65 as such compliance pertains to the
5 Products at issue.

6 The parties agree that compliance with this Agreement in regard to the Products shall
7 constitute compliance with Proposition 65 for those Products.

8 **6. DCS's Release Of Dr. Leeman.** DCS, by this Agreement, waives all rights to
9 institute any form of legal action against Dr. Leeman and her attorneys or representatives, for all
10 actions or statements made by Dr. Leeman, and her attorneys or representatives, in the course of
11 seeking enforcement of Proposition 65 or California Business & Profession Code § 17200 or §
12 17500 against DCS in this Action.

13 **7. Sales Data.** DCS understands that the sales data provided to counsel for Dr.
14 Leeman by DCS was a material factor upon which Dr. Leeman has relied to determine the
15 amount of payments made pursuant to Health & Safety Code § 25249.7(b) in this Agreement.
16 To the best of DCS's knowledge, the sales data provided accurately reflects sales of DCS's
17 Products in its own retail stores in California. In the event that Dr. Leeman discovers facts that
18 demonstrate to a reasonable degree of certainty that the sales data DCS has provided is
19 materially inaccurate, the parties shall meet in a good-faith attempt to resolve the matter within
20 ten (10) business days of DCS's receipt of notice from Dr. Leeman of her intent to challenge the
21 accuracy of the sales data. If this good-faith attempt fails to resolve Dr. Leeman's concerns, Dr.
22 Leeman shall have the right to reinstitute an enforcement action against DCS, for those
23 additional Products, based upon existing 60 Day Notices of Violation served on DCS where the
24 subject of the Notices is Decanters and Other Glassware with Colored Designs on the Exterior
25 (containing lead) in Boxed Gift Sets, Such as Sleep Well Tonight #674341. In such case, all
26 applicable statutes of limitation shall be deemed tolled for the period between the date Dr.
27 Leeman filed the instant action and the date Dr. Leeman notifies DCS that she is reinstating
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1 the action for the additional Products. Provided, however, that: a) Dr. Leeman shall not have
2 the option of exercising her rights under this Paragraph more than one year following the
3 Effective Date and b) DCS shall have no additional liability, and Dr. Leeman waives any claims
4 that might otherwise be asserted, from the Effective Date until the date that Dr. Leeman
5 provides notice under this Paragraph 7.0, so long as DCS has complied with the requirements of
6 Paragraph 1 for all of the Products, including those numbers of Products additionally
7 discovered.

8 **8. Court Approval.** The Parties shall mutually employ their best efforts to support
9 the entry of this Agreement as a Consent Judgment and obtain approval of the Joint Motion by
10 the Court in a timely manner. If, for any reason, this Consent Judgment is not ultimately
11 approved by the Court within twelve (12) months following the Effective Date, this Agreement
12 shall, unless otherwise agreed in writing by the Parties, be deemed null and void, and all monies
13 provided to Dr. Leeman or her counsel shall be refunded to DCS within fifteen (15) days after
14 receipt of written notice to Dr. Leeman's counsel from DCS pursuant to this Paragraph.

15 **9. Severability.** In the event that any of the provisions of this Agreement are held
16 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
17 affected.

18 **10. Attorneys' Fees.** In the event that a dispute arises with respect to any provisions
19 of this Agreement (including, but not limited to, disputes arising from the provisions in
20 Paragraphs 2 and 3), the prevailing party shall be entitled to recover costs and reasonable
21 attorneys' fees.

22 **11. Governing Law.** The terms of this Agreement shall be governed by the laws of
23 the State of California and shall apply within the State of California.

24 **12. Notices.** All correspondence to Dr. Leeman shall be mailed to:
25 Gregory Sheffer
26 Sheffer & Chanler, LLP
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1 160 Sansome Street, 2nd Floor
2 San Francisco, CA 94104-3706

3 All correspondence to DCS shall be mailed to:

4 Ann G. Grimaldi
5 McKenna Long & Aldridge LLP
6 One Market Plaza
7 Spear Street Tower, 35th Floor
8 San Francisco, CA 94105

9 **13. Compliance With Reporting Requirements (Health & Safety Code**

10 **§25249.7(f)). Dr. Leeman agrees to comply with the reporting form requirements referenced in**
11 **11 Cal. Code Regs. § 3000, et seq.** Pursuant to the regulations promulgated under 11 Cal. Code
12 **Regs. § 3003, Dr. Leeman shall present this Consent Judgment to the California Attorney**
13 **General's office within two (2) days after receiving all necessary signatures. A noticed motion**
14 **to enter the Consent Judgment will then be served on the Attorney General's office at least**
15 **forty-five (45) days prior to the date a hearing is scheduled on such a motion in the San**
16 **Francisco Superior Court.**

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

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1 15. **Authorization.** The undersigned are authorized to execute this Agreement on
2 behalf of their respective parties and have read, understood and agree to all of the terms and
3 conditions of this Agreement.
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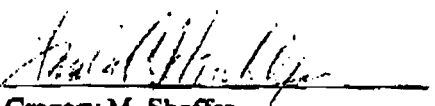
5 **AGREED TO:**
6 **DATE:** 12/17/03

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9 Whitney R. Leeman, Ph.D.
10 **PLAINTIFF**

AGREED TO:
DATE: _____

Michael L. Ulica
Chief Financial Officer
Consumer Products
The Discovery Channel Store, Inc., a
subsidiary of Discovery Communications, Inc.
DEFENDANT

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14 **APPROVED AS TO FORM:**
15 **DATE:** 12/17/03

16 SHEFFER & CHANLER LLP
17 
18 Gregory M. Sheffer
19 Attorneys for Plaintiff
20 Whitney R. Leeman, Ph.D.

APPROVED AS TO FORM:
DATE: _____

MCKENNA LONG & ALDRIDGE LLP

Ann G. Grimaldi
Attorneys for Defendant
The Discovery Channel Store, Inc., a
subsidiary of Discovery Communications, Inc.

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22 **IT IS ORDERED, ADJUDGED AND DECREED** that judgment is hereby entered in
23 accordance with the terms of this Consent Judgment between the parties.
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25 **DATE:** _____

Judge of the Superior Court


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

AGREED TO:
DATE: _____

AGREED TO:
DATE: 12/12/03

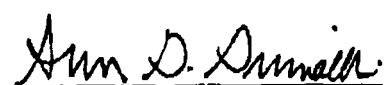
Whitney R. Leeman, Ph.D.
PLAINTIFF


Michael L. Ulica
Chief Financial Officer
Consumer Products
The Discovery Channel Store, Inc., a
subsidiary of Discovery Communications, Inc.
DEFENDANT

APPROVED AS TO FORM:
DATE: _____
SHEFFER & CHANLER LLP

APPROVED AS TO FORM:
DATE: 12/19/03
MCKENNA LONG & ALDRIDGE LLP

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


Ann G. Grimaldi
Attorneys for Defendant
The Discovery Channel Store, Inc., a
subsidiary of Discovery Communications, Inc.

IT IS ORDERED, ADJUDGED AND DECREED that judgment is hereby entered in accordance with the terms of this Consent Judgment between the parties.

DATE: _____

Judge of the Superior Court

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EXHIBIT A

60-DAY NOTICE OF VIOLATION

SENT IN COMPLIANCE WITH CALIFORNIA HEALTH & SAFETY CODE §25249.7(d)

February 7, 2003

To: California Attorney General's Office;
 District Attorney's Office for 58 Counties;
 City Attorneys for San Francisco, San Diego, San Jose, Sacramento and Los Angeles;
 Michala English, President - Discovery Channel Store, Inc., a subsidiary of Discovery
 Communications, Inc.

From: Dr. Whitney R. Leeman

INTRODUCTION

My name is Whitney R. Leeman. I hold a Doctor of Philosophy degree in Environmental Engineering. I am a citizen of California acting in the interest of the general public. I seek to promote awareness of exposures to toxic chemicals in products sold in California and, if possible, to improve human health by reducing hazardous substances contained in such items. This letter is provided to the parties listed above pursuant to California Health & Safety Code §25249.6 *et seq.* ("Proposition 65"). As required, notice is also being provided to the violator, Discovery Channel Store Inc., a subsidiary of Discovery Communications, Inc. (the "Violator"). The violations covered by this notice consist of the routes of exposures and type of harm potentially resulting from such exposure to the following toxic chemical or chemicals ("listed chemicals"):

<u>LISTED CHEMICALS</u>	<u>ROUTES OF EXPOSURE</u>	<u>TYPES OF HARM</u>
Lead and lead compounds (hereafter "lead")	Ingestion, Dermal	Birth Defects and Other Reproductive Harm

NATURE OF ALLEGED VIOLATION (PRODUCT EXPOSURE)

The specific type or types of products (hereafter the "products") that are causing consumer and occupational exposures in violation of Proposition 65 (and that are covered by this notice) are listed on Exhibit A. The Violator's sales of these glassware products have been occurring from February 7, 2000 to the present. As a result of the sales of these products, exposures to the listed chemicals have been occurring without clear and reasonable warnings as required by Proposition 65. Without proper

warnings regarding the toxic effects of exposures to the listed chemicals produced by the products, California citizens lack the information necessary to make informed decisions on whether and how to eliminate (or reduce) the risk of exposure to the toxic chemicals from reasonably foreseeable use of the products.

CONSUMER PRODUCT EXPOSURE

California consumers, through the act of buying, acquiring or utilizing the products, are exposed to the listed chemicals. For example, exposures occur when California citizens use, display, clean, repair, pack, unpack, assemble, disassemble, arrange, store or otherwise handle the products. These tasks cause consumers to be exposed through the routine brushing of the parts or portions of the products containing readily available surface lead/lead compounds. Additionally, exposure can occur through the routine touching of other materials that are contaminated with the lead/lead compounds as a result of these tasks. People likely to be exposed include both children and adults.

OCCUPATIONAL EXPOSURE

Similarly, men and women in California use the products as a part of their jobs and are, therefore, subject to occupational exposures to the listed chemicals. Employees are exposed at the California business locations of the apparent manufacturer, distributor and retailer (and their agents, assigns and divisions) as well as all other California locations where the products, or the component parts thereof that include the listed chemicals, are used, packed, repacked, labeled, assembled, disassembled, arranged, displayed, cleaned, stocked, stored, repaired or otherwise handled. These tasks cause employee exposure through the routine touching of the parts or portions of the products containing readily available surface lead/lead compounds. Additionally, exposure can occur through the routine touching of other materials that are contaminated with the lead/lead compounds as a result of these tasks. These products are also used by sole proprietors and other persons in settings not covered by the OSH Act. This notice alleges the violation of Proposition 65 with respect to occupational exposure governed by the California State Plan for Occupational Safety and Health. The State Plan incorporates the provisions of Proposition 65, as approved by Federal OSHA on June 5, 1987. This approval specifically placed certain conditions with regard to occupational exposures on Proposition 65, including that it does not apply to the conduct of manufacturers occurring outside the State of California. The approval also provides that an employer may use the means of compliance in the general hazard communication requirement to comply with Proposition 65. It also requires that supplemental enforcement is subject to the supervision of the California Occupational Safety and Health

Administration. Accordingly, any settlement, civil complaint, or substantive court orders in this matter must be submitted to the Attorney General.

CONTACT INFORMATION

Please direct all questions concerning this notice to my counsel at the following address:

Gregory M. Sheffer, Esq.
 Sheffer & Chanler LLP
 160 Sansome Street, 2nd Floor
 San Francisco, CA 94104
 Telephone: (415) 434-9111
 Facsimile: (415) 434-9115

PROPOSITION 65 INFORMATION

For general information concerning the provisions of Proposition 65, please feel free to contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900. For the Violator's reference, I have attached a copy of "Proposition 65: A Summary" which has been prepared by OEHHA.

ADDITIONAL NOTICE INFORMATION

THIS INFORMATION IS NOT REQUIRED TO BE PROVIDED UNDER CAL. CODE REGS., TITLE 22 § 12903(b)(4).

A specific example of the type of offending product identified herein (#674341) was recently purchased and witnessed being available for purchase or use in California at retail stores owned or controlled by the Violator in Contra Costa County, Northern California. Based on publicly available information, the Violator is the manufacturer and a retailer of the products at issue.

EXHIBIT A

PRODUCTS

Decanters and Other Glassware with Colored
 Designs on the Exterior (containing lead) in Boxed
 Gift Sets

TOXINS

Lead and lead compounds

** Such as Sleep Well Tonight! #674341*

** This specifically identified example of the type of product subject to this Notice is for the recipient's benefit and it not meant to be an exhaustive or comprehensive identification of each specific offending product.*

PROOF OF SERVICE

I, the undersigned, declare under penalty of perjury:

I am a citizen of the United States, over the age of 18 years, and not a party to the within action; my business address is 160 Sansome Street, 2nd Floor, San Francisco, CA 94104.

On February 7, 2003, I served the following document:

60-DAY NOTICE OF VIOLATION SENT IN COMPLIANCE WITH HEALTH & SAFETY CODE §25249.7(d);

CERTIFICATE OF MERIT; AND

CERTIFICATE OF MERIT ATTACHMENTS (SERVED ONLY ON THE ATTORNEY GENERAL)

served on the Violator listed below via 2nd Day Air Service by placing a true and correct copy in a sealed envelope, addressed to such Violator and placing such envelope in a United Parcel Service Drop-Off Box:

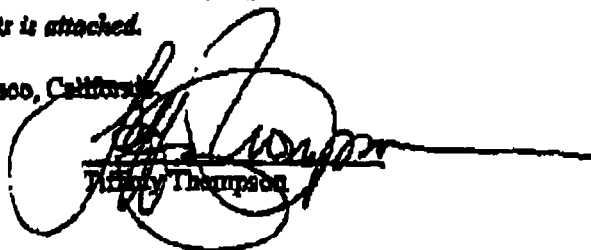
Michela English, President
Discovery Channel Store, Inc. a
subsidiary of Discovery
Communications, Inc.
1608 4th St.
Berkeley, CA 94710

as well as providing copies of the notice to the public enforcers by placing a true and correct copy in a sealed envelope, addressed to each party listed below, and served as follows:

<i>Via 2nd Day Air Service by placing such envelope in a United Parcel Service Drop-Off Box:</i>	The Attorney General of the State of California;
<i>By placing each envelope in a United States Postal Service mailbox, first class postage prepaid:</i>	The District Attorney for Each of the 58 counties in California; and The City Attorney for Los Angeles, San Diego, San Jose, San Francisco and Sacramento;

A list of addresses for each of these recipients is attached.

Executed on February 7, 2003, at San Francisco, California


Kimberly Thompson

CERTIFICATE OF MERIT

Health and Safety Code Section 25249.7(d)

I, Gregory M. Sheffield, hereby declare:

1. This Certificate of Merit accompanies the attached sixty-day notice in which it is alleged the party identified in the notice has violated Health and Safety Code section 25249.6 by failing to provide clear and reasonable warnings.
2. I am the attorney for the noticing party.
3. I have consulted with one or more persons with relevant and appropriate experience or expertise who has reviewed facts, studies, or other data regarding the alleged exposure to the listed chemicals that are the subject of this action.
4. Based on the information obtained through those consultations, and on all other information in my possession, I believe there is a reasonable and meritorious case for the private action. I understand that "reasonable and meritorious case for the private action" means that the information provides a credible basis that all elements of the plaintiffs' case can be established and the information did not prove that the alleged violator will be able to establish any of the affirmative defenses set forth in the statute.
5. The copy of this Certificate of Merit served on the Attorney General attaches to it factual information sufficient to establish the basis for this certificate, including information identified in Health and Safety Code §25249.7(h)(2) (i.e., (1) the identity of the persons consulted with and relied on by the certifier, and (2) the facts, studies, or other data reviewed by those persons.)

Dated: 2/7/03

Gregory M. Sheffield

The Honorable Tom Boyd
Alameda County District Attorney
1221 Fulton Street, Room 200
Oakland, CA 94612

The Honorable Tom Rhee
Alameda County District Attorney
705 Oak Street, 8th Fl.
Oakland, CA 94612

The Honorable L. Ann Turner
Alameda County District Attorney
P.O. Box 344
Alhambra, CA 91810

The Honorable Michael Ramsey
Butte County District Attorney, Justice
Center
35 County Center Drive
Oroville, CA 95967

The Honorable Jeffrey Tullis
Calaveras County District Attorney
Government Center
San Andreas, CA 95348

The Honorable John R. Poyser
Colusa County District Attorney
217 Horton Street
Colusa, CA 95926

The Honorable Gary T. Vasey
Contra Costa County District Attorney
P.O. Box 870
Walpole, CA 94593

Robert J. Ormsd
Del Norte County District Attorney
461 N Street
Orleans, CA 95561

The Honorable Gary Day
El Dorado County District Attorney
816 Main Street
Placerville, CA 95667

The Honorable Edward Hunt
Fresno County District Attorney
2820 Tulare Street, #1000
Fresno, CA 93721

The Honorable Robert H. Hensel
Glenn County District Attorney
P.O. Box 430
Weed, CA 96094

The Honorable Terry A. Parmer
Humboldt County District Attorney
201 3rd Street
Eureka, CA 95501

The Honorable Cheryl E. Clark
Imperial County District Attorney
221 West Main Street
El Centro, CA 92526

The Honorable Peter McCourt
Inyo County District Attorney
P.O. Drawer 8
Independence, CA 93526

The Honorable Edward R. Jacobs
Kern County District Attorney
12111 Canyon Avenue
Bakersfield, CA 93311

The Honorable Ronald Colburn
Kings County District Attorney
1402 West Lundy Boulevard
Northridge, CA 91324

The Honorable Gary Lusk
Los Angeles County District Attorney
201 N. Foothill Street
Laurel, CA 91601

The Honorable Robert Beyer
Los Angeles County District Attorney
200 S. Los Angeles Street, Suite 2000
Glendale, CA 91201

The Honorable Steve Spauldy
Los Angeles County District Attorney
270 West Temple Street, Suite 1020
Los Angeles, CA 90010

The Honorable Ernest LICHT
Madura County District Attorney
221 West Yosemite Avenue
Madura, CA 95957

The Honorable Paul Neasey
Mariposa County District Attorney
201 Clark Center Drive, Room 100
San Rafael, CA 94583

The Honorable Christine Johnson
Mariposa County District Attorney
P.O. Box 744
Madura, CA 95957

The Honorable Norman L. Woyan
Merced County District Attorney
P.O. Box 1020
Union, CA 95382

The Honorable Gordon Steiner
Mendocino County District Attorney
2022 N Street
Marysville, CA 95942

The Honorable Tom Hutterling
Merced County District Attorney
P.O. Box 1771
Alhambra, CA 91801

The Honorable George Smith
Mono County District Attorney
P.O. Box 872
Independence, CA 95957

The Honorable Gary P.O. Co
Monterey County District Attorney
240 Church Street
Redwood, CA 95571

The Honorable Gary Labovitch
Napa County District Attorney
501 Parkway Mall
Napa, CA 94558

The Honorable John Ferguson
Nevada County District Attorney
301 Charon Street, Suite 2
Nevada City, CA 95959

The Honorable Tony Panchanathan
Orange County District Attorney
700 Glen Canyon Drive West, 2nd Floor
Santa Ana, CA 92701

The Honorable Brent Patterson
Placer County District Attorney
1400 S. Avenue, 20th Floor
Auburn, CA 95602

The Honorable James Pettibone
Plumas County District Attorney
800 Main Street, Room 404
Colusa, CA 95621

The Honorable Henry C. Tuck
Plumas County District Attorney
4075 Lake Street, 1st Floor
Auburn, CA 95601

The Honorable Jim Brady
San Joaquin County District Attorney
P.O. Box 740
Sacramento, CA 95814

The Honorable Henry J. Cantor
San Joaquin County District Attorney
470 4th Street
Folsom, CA 95630-1001

The Honorable Sarah Reed
San Joaquin County District Attorney
210 N. Broadway, West Addition
SAC Sacramento, CA 95814

The Honorable Paul Pineda
San Joaquin County District Attorney
228 W. Broadway, Suite 700
San Joaquin, CA 95121

The Honorable Thomas Williams
San Joaquin County District Attorney
200 Square Street
San Francisco, CA 94102

The Honorable John Peltzer
San Joaquin County District Attorney
P.O. Box 200
Stockton, CA 95211

The Honorable Sarah Stein
San Luis Obispo County District Attorney
2003 Monterey Street, Room 400
San Luis Obispo, CA 93402

The Honorable James P. Fox
San Mateo County District Attorney
400 County Center, Third Floor
Redwood City, CA 94063

The Honorable Thomas W. Brinkley, Jr.
Santa Barbara County District Attorney
1100 Santa Barbara Street
Santa Barbara, CA 93101

The Honorable George Stensley
Santa Clara County District Attorney
70 West Harding Street, Wood View
San Jose, CA 95110

The Honorable Rob Smith
Santa Cruz County District Attorney
701 Church Street
Santa Cruz, CA 95061

The Honorable Matthew Good
Shasta County District Attorney
1000 Court Street, Third Floor
Redding, CA 96001

The Honorable Steven O'Connell
Sierra County District Attorney
Court House, P.O. Box 407
Downsville, CA 95928

The Honorable Paul Hill
Sierraville County District Attorney
P.O. Box 200
Yuba, CA 95997

The Honorable David Peltzer
Solano County District Attorney
600 Linden Avenue
Folsom, CA 95630

The Honorable Mike Miller
Stanislaus County District Attorney
620 Administration Plaza, Room 200
Stockton, CA 95210

The Honorable Jim Sweeney
Stanislaus County District Attorney
1001 Street, Room 200, P.O. Box 402
Stockton, CA 95210

The Honorable Gary M. Jacobs
Sutter County District Attorney
400 General Street
Yuba City, CA 95901

The Honorable Greg Cabus
Tehama County District Attorney
P.O. Box 110
Parli, CA 95961

The Honorable David L. Clark
Tulare County District Attorney
P.O. Box 100
Wasco, CA 95388

The Honorable Fred Olson
Tulare County District Attorney
271 A. Lincoln Street, 2nd Fl.
Visalia, CA 93291

The Honorable Donald L. Squibbin
Tulare County District Attorney
1000 Green
Visalia, CA 93291

The Honorable Michael Ruffalo
Ventura County District Attorney
600 Santa Victoria Square
Ventura, CA 93001

The Honorable David E. Harshbarger
Yuba County District Attorney
371 General Street
Yuba City, CA 95901

The Honorable Patrick McGrath
Yuba County District Attorney
816 9th Street
Marysville, CA 95901

Dr. Richard J. DeBartolo
City of Los Angeles City Attorney
200 North Main Street
Los Angeles, CA 90012

San Jose City Attorney's Office
151 West Alameda Street
San Jose, CA 95110

The Honorable Gary E. Gelin
San Diego City Attorney's Office
1200 San Antonio, 8th Fl.
San Diego, CA 92101

Edward L. Johnson
San Francisco City Attorney's Office
240 Main Street, 10th Floor
San Francisco, CA 94102

David J. Hester
San Francisco City Attorney's Office
City Hall, Room 204
San Francisco, CA 94102

Office of the California Attorney General
Proprietor of Electronic Filing
Assistant Proprietor
1314 Clay Street, 20th Floor
P.O. Box 7000
Oakland, CA 94612-0000

**OFFICE OF ENVIRONMENTAL HEALTH HAZARD
ASSESSMENT
CALIFORNIA ENVIRONMENTAL PROTECTION AGENCY**

**THE SAFE DRINKING WATER AND TOXIC ENFORCEMENT
ACT OF 1986
(PROPOSITION 65): A SUMMARY**

The following summary has been prepared by the Office of Environmental Health Hazard Assessment, the lead agency for the implementation of the Safe Drinking Water and Toxic Enforcement Act of 1986 (commonly known as "Proposition 65"). A copy of this summary must be included as an attachment to any notice of violation served upon an alleged violator of the Act. The summary provides basic information about the provisions of the law, and is intended to serve only as a convenient source of general information. It is not intended to provide authoritative guidance on the meaning or application of the law. The reader is directed to the statute and its implementing regulations (see citations below) for further information.

Proposition 65 appears in California law as Health and Safety Code Sections 25249.6 through 25249.13. Regulations that provide more specific guidance on compliance, and that specify procedures to be followed by the State in carrying out certain aspects of the law, are found in Title 22 of the California Code of Regulations, Sections 12000 through 14000.

WHAT DOES PROPOSITION 65 REQUIRE?

The "Governor's List." Proposition 65 requires the Governor to publish a list of chemicals that are known to the State of California to cause cancer, or birth defects or other reproductive harm. This list must be updated at least once a year. Over 650 chemicals have been listed as of May 1, 1986. Only those chemicals that are on the list are regulated under this law. Businesses that produce, use, release or otherwise engage in activities involving these chemicals must comply with the following:

Clear and reasonable warnings. A business is required to warn a person before "knowingly and intentionally" exposing that person to a listed chemical. The warning given must be "clear and reasonable." This means that the warning must: (1) clearly make known that the chemical involved is known to cause cancer, or birth defects or other reproductive harm; and (2) be given in such a way that it will effectively reach the person before he or she is exposed. Exposures are exempt from the warning requirement if they occur less than twelve months after the date of listing of the chemical.

Prohibition from discharges into drinking water. A business must not knowingly discharge or release a listed chemical into water or onto land where it passes or probably will pass into a source of drinking water. Discharges are exempt from this requirement if they occur less than twenty months after the date of listing of the chemical.

DOES PROPOSITION 65 PROVIDE ANY EXEMPTIONS?

Yes. The law exempts:

Governmental agencies and public water utilities. All agencies of the federal, State or local government, as well as entities operating public water systems, are exempt.

Businesses with nine or fewer employees. Neither the warning requirement nor the discharge prohibition applies to a business that employs a total of nine or fewer employees.

Exposures that pose no significant risk of cancer. For chemicals that are listed as known to the State to cause cancer ("carcinogens"), a warning is not required if the business can demonstrate that the exposure occurs at a level that poses "no significant risk." This means that the exposure is calculated to result in not more than one excess case of cancer in 100,000 individuals exposed over a 70-year lifetime. The Proposition 65 regulations identify specific "no significant risk" levels for more than 250 listed carcinogens.

Exposures that will produce no observable reproductive effect at 1,000 times the level in question. For chemicals known to the State to cause birth defects or other reproductive harm ("reproductive toxicants"), a warning is not required if the business can demonstrate that the exposure will produce no observable effect, even at 1,000 times the level in question. In other words, the level of exposure must be below the "no observable effect level (NOEL)," divided by a 1,000-fold safety or uncertainty factor. The "no observable effect level" is the highest dose level which has not been associated with an observable adverse reproductive or developmental effect.

Discharges that do not result in a "significant amount" of the listed chemical entering into any source of drinking water. The prohibition from discharges into drinking water does not apply if the discharger is able to demonstrate that a "significant amount" of the listed chemical has not, does not, or will not enter any drinking water source, and that the discharge complies with all other applicable laws, regulations, permits, requirements, or orders. A "significant amount" means any detectable amount, except an amount that would meet the "no significant risk" or "no observable effect" test if an individual were exposed to such an amount in drinking water.

HOW IS PROPOSITION 65 ENFORCED?

Enforcement is carried out through civil lawsuits. These lawsuits may be brought by the Attorney General, any district attorney, or certain city attorneys (those in cities with a population exceeding 750,000). Lawsuits may also be brought by private parties acting in the public interest, but only after providing notice of the alleged violation to the Attorney General, the appropriate district attorney and city attorney, and the business accused of the violation. The notice must provide adequate information to allow the recipient to assess the nature of the alleged violation. A notice must comply with the information and procedural requirements specified in regulations (Title 22, California Code of Regulations, Section 12903). A private party may not pursue an enforcement action directly under Proposition 65 if one of the governmental officials noted above initiates an action within sixty days of the notice.

A business found to be in violation of Proposition 65 is subject to civil penalties of up to \$2,500 per day for each violation. In addition, the business may be ordered by a court of law to stop committing the violation.

For Further Information

Contact the Office of Environmental Health Hazard Assessment's Proposition 65 Implementation Office at (916) 445-6900.

EXHIBIT B

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PROP 65

WARNING

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

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EXHIBIT C

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