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6 Attorneys for Plaintiff  
WHITNEY R. LEEMAN, PH.D.  
7

8 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
9 **IN AND FOR THE COUNTY OF ALAMEDA**  
10 **UNLIMITED CIVIL JURISDICTION**

11 WHITNEY R. LEEMAN, Ph.D.,

12 Plaintiff,

13 v.

14 GALLERIA, INC.; MARSHALLS, A  
SUBSIDIARY OF THE TJX COMPANIES,  
15 INC.; ROSS STORES, INC.; and DOES 1  
through 150,

16 Defendants.  
17

CASE NO. HG-04-147329

**CONSENT JUDGMENT**

Complaint Filed: March 24, 2004

18 This Consent Judgment ("Agreement" or "Consent Judgment") is entered into by  
19 and between Whitney R. Leeman, Ph.D. and Galleria, Inc. (hereinafter referred to as  
20 GALLERIA), Ross Stores, Inc. (hereinafter referred to as ROSS), and Marshalls of CA,  
21 LLC and its affiliated companies doing business in California as Marshalls (hereinafter  
22 referred to as MARSHALLS), who are persons doing business within the meaning of  
23 Health & Safety Code §25249.11 and also are persons, firms, corporations or  
24 associations within the meaning of Business & Professions Code §17201 and/or §17500  
25 (hereafter referred to jointly as "SETTLING DEFENDANTS"), as of November 8, 2004  
26 (the "Effective Date"). The parties agree to the following terms and conditions:

27 ///

28 ///

1           **WHEREAS:**

2                   A.     Whitney R. Leeman, Ph.D. is an individual residing in  
3 Sacramento, California, who seeks to promote awareness of exposures to toxic  
4 chemicals and improve human health by reducing or eliminating hazardous substances  
5 contained in consumer and industrial PRODUCTS;

6                   B.     Dr. Leeman alleges that SETTLING DEFENDANTS are  
7 companies that currently manufacture, distribute and/or otherwise sell certain glass and  
8 metal candle/votive holders and photo frames that contain lead, a substance known to  
9 the State of California to cause cancer and birth defects (or other reproductive harm);

10                  C.     A list of such SETTLING DEFENDANTS PRODUCTS that are  
11 alleged to contain lead (the "Listed Chemical"), and that are covered by this Agreement,  
12 is provided in Exhibit A (all such SETTLING DEFENDANTS' PRODUCTS to be  
13 collectively referred to hereinafter as the "PRODUCTS ");

14                  D.     On September 12, 2003, Leeman first served SETTLING  
15 DEFENDANTS and other public enforcement agencies with a document entitled "60-Day  
16 Notice of Violation" that provided SETTLING DEFENDANTS, and such public enforcers,  
17 with notice that SETTLING DEFENDANTS were allegedly in violation of Health & Safety  
18 Code §25249.6 for failing to warn purchasers that certain PRODUCTS sold in California  
19 expose users to the Listed Chemical; and

20                  E.     On March 24, 2004, Leeman filed a complaint entitled  
21 *Whitney R. Leeman v. Galleria, Inc., et al.* in the Alameda County Superior Court, naming  
22 GALLERIA, ROSS (erroneously sued as Ross, Inc.), and MARSHALLS (erroneously  
23 sued as "Marshalls, a subsidiary of the TJX Companies, Inc.") as defendants and alleging  
24 violations of Business & Professions Code §17200 and Health & Safety Code §25249.6  
25 on behalf of individuals in California who allegedly have been exposed to the Chemical  
26 contained in certain PRODUCTS that SETTLING DEFENDANTS sell.

27                  F.     Nothing in this Agreement shall be construed as an admission  
28 by any SETTLING DEFENDANT of any fact, finding, issue of law or violation of law, nor

1 shall compliance with this Agreement constitute or be construed as an admission by any  
2 SETTLING DEFENDANT of any fact, finding, conclusion, issue of law or violation of law.  
3 However, this paragraph shall not diminish or otherwise affect the obligations,  
4 responsibilities, and duties of any SETTLING DEFENDANT under this Agreement.

5 **NOW THEREFORE, WHITNEY R. LEEMAN AND SETTLING DEFENDANTS AGREE**  
6 **AS FOLLOWS:**

7 **1.0 Product Warnings.**

8 (a) Subject to Paragraph 1.0(b) below, beginning from the  
9 Effective Date of this Agreement, SETTLING DEFENDANTS shall ensure that all  
10 PRODUCTS manufactured but not yet shipped and/or offered for sale in California bear  
11 the following warning statement:

12 **"WARNING: This product contains LEAD, a chemical**  
13 **known to the State of California to cause birth defects (or**  
**other reproductive harm). Wash hands after handling.**

14 (b) In no event shall SETTLING DEFENDANTS offer any of the  
15 PRODUCTS that are manufactured after the Effective Date for sale in California unless  
16 they are reformulated to eliminate the presence of lead or bear the warning statement  
17 listed in Paragraph 1.0(a), subject to the exception set forth in Paragraph 1.0(c). The  
18 warning stated above may be placed on: (1) a product label; (2) on the accompanying  
19 packaging as a sticker; or (3) on a store sign sufficiently near the PRODUCTS' point of  
20 sale so that it is likely to be read by an ordinary individual under customary conditions of  
21 purchase for the PRODUCTS. For purposes of this Consent Judgment, a warning sticker  
22 placed on product packaging that is not available to the consumer before purchase, or on  
23 product packaging that does not accompany the PRODUCTS when purchased, is not  
24 reasonably calculated to transmit the requisite warning and, thus, may not be used to  
25 comply with this paragraph.

26 (c) Notwithstanding any other provision of this Agreement, no  
27 warning for exposure to lead shall or need be provided by SETTLING DEFENDANTS for:  
28 (1) any PRODUCT containing 0.1 percent (.1%) lead or less (by weight) in each material

1 used in the PRODUCTS (such as solder or came); (2) any PRODUCT, for which the  
2 reasonably foreseeable exposure to the Listed Chemical from the PRODUCT is indirect,  
3 that yields a result of less than 1.0 micrograms (ugs) of lead by a Ghost Wipe™ test  
4 conducted on all metal portions of the perimeter or other surface area of the PRODUCT,  
5 performed as outlined in NIOSH method of detection 9100; or (3) any PRODUCT, for  
6 which the reasonably foreseeable exposure to the Listed Chemical from the PRODUCT  
7 is direct, that yields a result of less than .25 micrograms (ugs) of lead by a Ghost Wipe™  
8 test conducted on all metal portions of the perimeter or other surface area of the  
9 PRODUCT, performed as outlined in NIOSH method of detection 9100.

10 **1.1 Lead-Free Component Commitment.** As part of its  
11 commitment to promote the public health, GALLERIA agrees, to the extent it sells any of  
12 the PRODUCTS in the future, to use its best efforts to specify, or cause the specification  
13 of, lead-free came (came containing 0.1% lead or less by weight) whenever such  
14 materials are used in the Products to be sold by GALLERIA in the State of California. For  
15 purposes of this Agreement, the term "use its best efforts" shall mean communicate in  
16 writing, including email correspondence, directly with the manufacturer(s) of the Products.

17 **2. Payment Pursuant To Health & Safety Code §25249.7(b).**  
18 Pursuant to Health & Safety Code §25249.7(b), GALLERIA shall pay \$12,000 in civil  
19 penalties in two equal installments. The first payment of \$6,000 is due within five (5)  
20 calendar days of the Effective Date. The second payment of \$6,000 is due on November  
21 8, 2005, but shall be waived if GALLERIA certifies in writing by August 15, 2005 that they  
22 have met the reformulation commitments set forth in paragraph 1.0 and have not sold  
23 any PRODUCTS containing lead during the period October 15, 2004 through July 31,  
24 2005. Payment shall be made to "Chanler Law Group In Trust For Whitney R. Leeman".  
25 If the Consent Judgment is not ultimately approved by the Court, Leeman will return all  
26 funds within five (5) calendar days of notice of the Court's decision. Those penalty  
27 monies received shall be apportioned by Dr. Leeman in accordance with Health & Safety  
28 Code § 25192, with 75% of these funds remitted to the State of California's Office of

1 Environmental Health Hazard Assessment and the remaining 25% of these penalty  
2 monies retained by Plaintiff as provided by Health and Safety Code § 25249.12(d). The  
3 Parties agree that GALLERIA's commitment to market only reformulated products has  
4 been accounted for in establishing the amount of penalties to be paid pursuant to this  
5 paragraph and that reformulation is not otherwise a remedy provided for by law.

6 MARSHALLS AND ROSS shall not be liable for any civil penalties  
7 pursuant to this Agreement.

8 **3. Reimbursement of Fees and Costs.** The parties  
9 acknowledge that Dr. Leeman and her counsel offered to resolve this dispute without  
10 reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
11 leaving this fee issue to be resolved after the material terms of the agreement had been  
12 settled. SETTLING DEFENDANTS then expressed a desire to resolve the fee and cost  
13 issue shortly after the other settlement terms had been finalized. Shortly thereafter the  
14 Parties then reached an accord on the compensation due to Plaintiff and its counsel  
15 under the private attorney general doctrine codified at Code of Civil Procedure § 1021.5  
16 for all work performed through the Effective Date of the Agreement. Under Code of Civil  
17 Procedure § 1021.5, GALLERIA shall reimburse Plaintiff and its counsel for fees and  
18 costs, incurred as a result of investigating, bringing this matter to SETTLING  
19 DEFENDANTS' attention, litigating and negotiating a settlement in the public interest.  
20 GALLERIA shall pay Plaintiff and its counsel \$24,000 for all attorneys' fees, expert and  
21 investigation fees, and litigation costs. The first payment of \$4,000 shall be made to  
22 Plaintiff's counsel within 5 calendar days of the Effective Date of this agreement. The  
23 balance of \$20,000 shall be paid within five (5) calendar days of receipt by GALLERIA of  
24 approval of this Consent Judgment by this court. Except as specifically provided in this  
25 Consent Judgment, SETTLING DEFENDANTS shall have no further obligation with  
26 regard to reimbursement of Plaintiff's attorney's fees and costs with regard to the  
27 PRODUCTS covered in these Actions.

28 MARSHALLS and ROSS shall not be liable for any of Plaintiff's

1 attorney's fees and costs pursuant to this Paragraph, including any fees and costs  
2 incurred by Plaintiff in seeking approval of this Consent Judgment.

3 **4. Post-Execution Activities.** The Parties acknowledge that,  
4 pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain  
5 judicial approval of this Agreement. It is further noted that the SETTLING DEFENDANTS  
6 requested that Dr. Leeman prepare and file this Motion To Approve the Agreement  
7 ("Motion"). In so doing, SETTLING DEFENDANTS agree to continue to use their best  
8 efforts to support the Motion.

9 **5. Dr. Whitney R. Leeman's Release of SETTLING**  
10 **DEFENDANTS.** Dr. Leeman, by this Agreement, on behalf of herself, her agents,  
11 representatives, attorneys, assigns and in the interest of the general public, waives all  
12 rights to institute or participate in, directly or indirectly, any form of legal action, and  
13 releases all other claims, liabilities, obligations, fines and damages, against SETTLING  
14 DEFENDANTS under Proposition 65 based on the alleged failure to warn about exposure  
15 to lead contained in any of the PRODUCTS. Dr. Leeman, by this Agreement, on behalf  
16 of herself, her agents, representatives, attorneys, and assigns, also waives all rights to  
17 institute or participate in, directly or indirectly, any form of legal action, and releases all  
18 other claims, liabilities, obligations, losses, fines and damages, against SETTLING  
19 DEFENDANTS under Proposition 65 based on the alleged failure to warn about exposure  
20 to Listed Chemical in association with the PRODUCTS.

21 **6. SETTLING DEFENDANTS' Release of Whitney R. Leeman.**  
22 SETTLING DEFENDANTS, by this Agreement, waive all rights to institute any form of  
23 legal action against Whitney R. Leeman or her attorneys or representatives, for all  
24 actions or statements made by Whitney R. Leeman, and her attorneys or representatives,  
25 in the course of seeking enforcement of Proposition 65 or Business & Profession Code  
26 §17200 against SETTLING DEFENDANTS.

27 **7. Court Approval.** If, for any reason, this Consent Judgment is  
28 not ultimately approved by the Court within the next twelve months, this Agreement shall

1 be deemed null and void.

2 **8. SETTling DEFENDANTS' Sales Data. SETTling**

3 DEFENDANTS understand that the sales information provided to counsel for Leeman by  
4 SETTling DEFENDANTS was a material factor upon which Leeman has relied to  
5 determine the amount of payments made pursuant to Health & Safety Code §25249.7(b)  
6 in this Agreement. To the best of SETTling DEFENDANTS' knowledge, the sales data  
7 provided are true and accurate. In the event that Leeman discovers facts that  
8 demonstrate to a reasonable degree of certainty that the sales data are materially  
9 inaccurate, the parties shall meet in a good faith attempt to resolve the matter within ten  
10 (10) days of SETTling DEFENDANTS' receipt of notice from Leeman of her intent to  
11 challenge the accuracy of the sales data. If this good faith attempt fails to resolve  
12 Leeman's concerns, Leeman shall have the right to re-institute an enforcement action  
13 against SETTling DEFENDANTS, for those additional PRODUCTS, based upon any  
14 existing 60-Day Notices of violation served on SETTling DEFENDANTS. In such case,  
15 all applicable statutes of limitation shall be deemed tolled for the period between the date  
16 Leeman filed the instant action and the date Leeman notifies SETTling DEFENDANTS  
17 that she is re-instituting the action for the additional PRODUCTS. Provided, however,  
18 that SETTling DEFENDANTS shall have no additional liability, and Leeman waives any  
19 claims that might otherwise be asserted, from the Effective Date until the date that  
20 Leeman provides notice under this Paragraph 8, so long as SETTling DEFENDANTS  
21 have complied with the requirements of Section 1.0 for all of the PRODUCTS, including  
22 those numbers of PRODUCTS additionally discovered.

23 **9. Severability.** In the event that any of the provisions of this

24 Agreement are held by a court to be unenforceable, the validity of the enforceable  
25 provisions shall not be adversely affected.

26 **10. Attorney's Fees.** In the event that a dispute arises with

27 respect to any provision(s) of this Agreement (including, but not limited to, disputes  
28 arising from payments to be made under this Agreement), reasonable attorneys' fees

1 incurred from the resolution of such dispute shall be available to the prevailing party.

2                   **11. Governing Law.** The terms of this Agreement shall be  
3 governed by the laws of the State of California.

4                   **12. Notices.** All correspondence to Whitney R. Leeman shall be  
5 mailed to:

6                                   David D. Stein, Esq.  
7                                   CHANLER LAW GROUP  
8                                   655 Redwood Highway, Suite 216  
9                                   Mill Valley, CA 94941  
10                                   Tel: (415) 380-9222

11                   All correspondence to SETTLING DEFENDANTS shall be mailed to:

12                                   David F. Wood, Esq.  
13                                   WOOD, SMITH, HENNING & BERMAN LLP  
14                                   355 S Grand Avenue, 25<sup>th</sup> Floor  
15                                   Los Angeles, CA 90071-1560  
16                                   Tel: (213) 633-1400

17                   In addition, all correspondence to ROSS STORES, INC. shall also  
18 be mailed to:

19                                   Jeffrey B. Cook, Manager Corporate Law  
20                                   ROSS STORES, INC.  
21                                   4440 Rosewood Drive  
22                                   Pleasanton, CA 94588  
23                                   Tel: (925) 965-4173 direct

24                   In addition, all correspondence to MARSHALLS OF CA, LLC shall  
25 also be mailed to :

26                                   Patrick Cafferty Esq.  
27                                   MUNGER, TOLLES & OLSON  
28                                   560 Mission Street 27<sup>th</sup> Floor  
                                      San Francisco, CA 94105  
                                      Tel: (415) 512-4000

**13. Compliance With Reporting Requirements (Health &**  
**Safety Code §25249.7(f))**. The parties acknowledge that the reporting provisions of  
Health & Safety Code § 25249.7(f) apply to this Consent Judgment. Counsel for Dr.  
Leeman shall comply with that section by submitting the required reporting form to, and  
serving a copy of this Consent Judgment on, the California Attorney General's Office as  
required by law.



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**14. Counterparts and Facsimile.** This Agreement may be

executed in counterparts and facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**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:**

**AGREED TO:**

DATE: 11/10/04

DATE:

  
Whitney R. Leeman  
PLAINTIFF

\_\_\_\_\_  
Galleria, Inc.  
DEFENDANT

\_\_\_\_\_  
Marshalls CA, LLC  
DEFENDANT


\_\_\_\_\_  
Ross Stores, Inc.  
DEFENDANT

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

DATE: 11/10/04

DATE:

  
David D. Stein  
Attorneys for Plaintiff  
WHITNEY R. LEEMAN

\_\_\_\_\_  
David F. Wood  
Attorneys for Defendant  
GALLERIA, INC.; MARSHALLS; ROSS  
STORES

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Whitney R. Leeman  
PLAINTIFF

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DEFENDANT

\_\_\_\_\_  
Marshalls CA, LLC  
DEFENDANT

\_\_\_\_\_  
Ross Stores. Inc.  
DEFENDANT

**APPROVED AS TO FORM:**

DATE:

\_\_\_\_\_  
David D. Stein  
Attorneys for Plaintiff  
WHITNEY R. LEEMAN

**APPROVED AS TO FORM:**

DATE:

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David F. Wood  
Attorneys for Defendant  
GALLERIA, INC.; MARSHALLS; ROSS  
STORES

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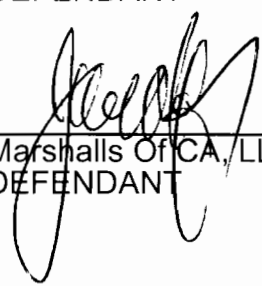
**AGREED TO:**

DATE:

DATE:

\_\_\_\_\_  
Whitney R. Leeman  
PLAINTIFF

\_\_\_\_\_  
Galleria, Inc.  
DEFENDANT

  
\_\_\_\_\_  
Marshalls Of CA, LLC  
DEFENDANT

\_\_\_\_\_  
Ross Stores, Inc.  
DEFENDANT

**APPROVED AS TO FORM:**

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David D. Stein  
Attorneys for Plaintiff  
WHITNEY R. LEEMAN

\_\_\_\_\_  
David F. Wood  
Attorneys for Defendant  
GALLERIA, INC.; MARSHALLS; ROSS  
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PLAINTIFF

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DEFENDANT

\_\_\_\_\_  
Marshalls CA, LLC  
DEFENDANT

\_\_\_\_\_  
Ross Stores, Inc.  
DEFENDANT  
Mark S. Askanas  
General Counsel & SVP Human Resources

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

DATE:

DATE: 11/12/04

\_\_\_\_\_  
David D. Stein  
Attorneys for Plaintiff  
WHITNEY R. LEEMAN

\_\_\_\_\_  
David F. Wood  
Attorneys for Defendant  
GALLERIA, INC.; MARSHALLS; ROSS  
STORES

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**EXHIBIT A**

Glass and Metal Candle/Votive Holders and Photo Frames containing lead sold, marketed, manufactured or otherwise offered by Galleria including:

- Pink Daisy (#7 16324 01159 1, TGH-65);
- Photo Frame 2 ½ " x 2 ½ " (#7 16324 80606 7, FGP-10OE/25)

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PLAINTIFF

Galleria, Inc.  
DEFENDANT

Marshalls CA, LLC  
DEFENDANT

Ross Stores. Inc.  
DEFENDANT

**APPROVED AS TO FORM:**

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David D. Stein  
Attorneys for Plaintiff  
WHITNEY R. LEEMAN

David F. Wood  
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