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5 Attorneys for Defendant  
6 LEVITZ FURNITURE INC.

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11 Attorneys for Plaintiff  
12 MICHAEL DIPIRRO

13  
14 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
15 IN AND FOR THE COUNTY OF ALAMEDA, HAYWARD BRANCH  
16 UNLIMITED CIVIL JURSDICTION

17  
18 MICHAEL DIPIRRO, ) No. 02-040398  
19 Plaintiff, )  
20 v. ) CONSENT JUDGMENT  
21 LEVITZ FURNITURE INCORPORATED; )  
22 LEVITZ FURNITURE CORPORATION, a )  
subsidiary of LEVITZ FURNITURE )  
23 INCORPORATED; and DOES 1 through 1000, )  
24 Defendants. )  
25  
26

1 This Consent Judgment ("Agreement" or "Consent Judgment") is entered into by  
2 and between Michael DiPirro and Levitz Furniture Corporation (hereinafter "LEVITZ"), a  
3 New York corporation, as of March 5, 2003, (the "Effective Date"). The parties agree to the  
4 following terms and conditions:

5 **WHEREAS:**

6 A. Michael DiPirro is an individual residing in San Francisco,  
7 California, who seeks to promote awareness of exposures to toxic chemicals and improve  
8 human health by reducing or eliminating hazardous substances contained in consumer  
9 and industrial products;

10 B. DiPirro alleges that LEVITZ is a company that sells certain Tiffany-  
11 Style Lamps that contain lead or lead compounds, a substance known to the State of  
12 California to cause cancer and birth defects (or other reproductive harm);

13 C. A list of such LEVITZ products that DiPirro alleges contain lead (or  
14 lead compounds) (the "Listed Chemical"), which are sold or offered for sale in California  
15 and which are covered by this Agreement, is provided in Exhibit A (all such LEVITZ  
16 products to be collectively referred to hereinafter as the "Products");

17 D. On November 20, 2001, Michael DiPirro first served LEVITZ and  
18 other public enforcement agencies with a document entitled "60-Day Notice of Violation"  
19 that provided LEVITZ, and such public enforcers, with notice that LEVITZ was allegedly in  
20 violation of Health & Safety Code §25249.6 for failing to warn purchasers that the Products  
21 sold in California expose users to the Listed Chemical; and

22 E. On February 8, 2002, Michael DiPirro filed a complaint entitled  
23 Michael DiPirro v. Levitz Furniture Incorporated, et al. in the Alameda County Superior  
24 Court, naming LEVITZ as a defendant and alleging violations of Business & Professions  
25 Code §17200 and §17500 as well as Health & Safety Code §25249.6 on behalf of individuals  
26 in California who allegedly have been exposed to the Listed Chemical, listed pursuant to

1 Proposition 65, contained in certain products that LEVITZ offers for sale; and

2 F. On October 2, 2002, Michael DiPirro served LEVITZ and other public  
3 enforcement agencies with a supplemental "60-Day Notice of Violation", and  
4 accompanying Certificate of Merit, that provided LEVITZ, and such public enforcers, with  
5 notice that LEVITZ was allegedly in violation of Health & Safety Code §25249.6 for failing  
6 to warn purchasers that the Products sold in California expose users to the Listed  
7 Chemical.

8 G. For the purpose of avoiding prolonged litigation, the parties enter  
9 into this Consent Judgment as a full settlement of all claims that were or could have been  
10 raised in the complaint based upon the facts alleged therein, or which could have been  
11 raised in the complaint arising out of the facts alleged therein. Nothing in this Agreement  
12 shall be construed as an admission by LEVITZ of any fact, finding, issue of law or violation  
13 of law, nor shall compliance with this Agreement constitute or be construed as an  
14 admission by LEVITZ of any fact, finding, conclusion, issue of law or violation of law.  
15 However, this paragraph shall not diminish or otherwise affect the obligations,  
16 responsibilities, and duties of LEVITZ under this Agreement.

17 **NOW THEREFORE, MICHAEL DIPIRRO AND LEVITZ AGREE AS FOLLOWS:**

18 **1.0 Product Warnings.** (a) No later than thirty days after the Effective  
19 Date of this Consent Judgment, LEVITZ shall not offer any Products for sale in California  
20 unless they are reformulated pursuant to the conditions of Paragraph 1.0(c), or bear the  
21 following warning statement:

22 **"WARNING:**

23 **This product contains LEAD, a substance known to**  
24 **the State of California to cause cancer, and birth**  
25 **defects (or other reproductive harm).**

26 **Wash Hands After Handling.**

(b) The warning stated above may be placed on: (1) a product label; (2) on  
the accompanying packaging as a sticker; or (3) on a store sign sufficiently near the

1 Products' point of sale so that it is likely to be read by an ordinary individual under  
2 customary conditions of purchase for the Products. For purposes of this Consent  
3 Judgment, a warning sticker placed on product packaging that is not available to the  
4 consumer before purchase, or on product packaging that does not accompany the Products  
5 when purchased, is not reasonably calculated to transmit the requisite warning and, thus,  
6 may not be used to comply with this paragraph.

7 (c) Notwithstanding any other provision of this Agreement, no warning for  
8 exposure to lead shall or need be provided by LEVITZ for: (1) any Product containing 0.1  
9 percent (.1%) lead or less (by weight) in each material used in the Products (such as solder  
10 or came); (2) any Product, for which the reasonably foreseeable exposure to the Listed  
11 Chemical from the product is indirect, that yields a result of less than 5 micrograms (ugs)  
12 of lead by a Ghost Wipe™ test conducted on all metal portions of the perimeter or other  
13 surface area of the Product, performed as outlined in NIOSH method of detection 9100; or  
14 (3) any Product, for which the reasonably foreseeable exposure to the Listed Chemical from  
15 the product is direct, that yields a result of less than .5 micrograms (ugs) of lead by a Ghost  
16 Wipe™ test conducted on all metal portions of the perimeter or other surface area of the  
17 Product, performed as outlined in NIOSH method of detection 9100.

### 18 1.1 **Inventory and Future Sales**

19 LEVITZ represents that it withdrew the Products from inventory after  
20 receiving plaintiff's 60-day notices and, to the best of its knowledge, no longer has any of  
21 the Products in its inventory or any of its retail outlets in California. LEVITZ agrees that it  
22 will not order any additional quantities of the Products, for purposes of selling the  
23 Products in any of its California stores, unless the vendor confirms that each Product, as  
24 shipped, complies with the terms of Paragraph 1.0.

25 2. **Payment Pursuant To Health & Safety Code §25249.7(b).** Pursuant  
26 to Health & Safety Code §25249.7(b), LEVITZ shall pay a civil penalty of \$18,000, to be

1 made in two payments (1) \$6,000 on March 10, 2003; and (2) \$12,000 on December 15, 2003.

2 Mr. DiPirro agrees to waive the second payment, and LEVITZ shall not be required to  
3 make the second payment, if LEVITZ certifies in writing, no later than December 1, 2003,  
4 that it either has used its "best efforts" to communicate directly with the manufacturer(s) of  
5 the Products to cause the Products to be designed or reformulated as defined in Paragraph  
6 1.0(c), or that it will use such "best efforts" before shipping the Products for sale in  
7 California. "Best efforts" shall mean, at a minimum, that LEVITZ shall contact the  
8 manufacturer(s) of the Products, via letter and email to inform said manufacturer(s) of the  
9 reformulation requirements under this Consent Judgment and request that such  
10 manufacturer(s) reformulate the Products within the guidelines defined in Paragraph  
11 1.0(c). A copy of such communication shall be attached to the written certification provided  
12 by Mr. DiPirro, if the "best efforts" alternative is selected by LEVITZ in an effort to waive  
13 the second penalty payment. Furthermore, on each of its scheduled, annual visits to the  
14 manufacturer(s), LEVITZ will further request that the manufacturer(s) reformulate the  
15 Products in accordance with the guidelines defined in Paragraph 1.0(c).

16 The penalty payment is to be made payable to "Sheffer & Chanler LLP In  
17 Trust For Michael DiPirro". If the Consent Judgment is not approved by the Court, DiPirro  
18 will return all funds, with interest thereon at the prevailing federal funds rate (currently set  
19 at 1.25% per annum), within five (5) calendar days of notice of the Court's decision. All  
20 penalty monies shall be apportioned by DiPirro in accordance with Health & Safety Code  
21 §25192, with 75% of these funds remitted to the State of California's Department of Toxic  
22 Substances Control.

23 **3.0 Reimbursement Of Fees And Costs.** The parties acknowledge that  
24 DiPirro and his counsel offered to resolve this dispute without reaching terms on the  
25 amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be  
26 resolved after the material terms of the agreement had been settled. LEVITZ then

1 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms  
2 had been finalized. The parties then attempted to (and did) reach an accord on the  
3 compensation due to DiPirro and his counsel under the private attorney general doctrine  
4 codified at C.C.P. §1021.5 for all work performed through the Effective Date of the  
5 Agreement.

6 Under the private attorney general doctrine codified at C.C.P. §1021.5,  
7 LEVITZ shall reimburse DiPirro and his counsel for his fees and costs, incurred as a result  
8 of investigating, bringing this matter to LEVITZ's attention, litigating and negotiating a  
9 settlement in the public interest. LEVITZ shall pay DiPirro and his counsel the total  
10 amount of \$23,947, for all attorneys' fees, expert and investigation fees, and litigation costs,  
11 on or before February 27, 2003. Payment should be made payable to "Sheffer & Chanler  
12 LLP." If the Consent Judgment is not approved by the Court, DiPirro and Sheffer &  
13 Chanler LLP will return all funds, with interest thereon at the prevailing federal funds rate  
14 (currently set at 1.25% per annum), within five (5) calendar days of notice of the Court's  
15 decision.

16 **3.1** Except as specifically provided in this Consent Judgment, Levitz  
17 shall have no further obligation with regard to reimbursement of plaintiff's attorney's fees  
18 and costs, including for any proceedings to obtain approval of this Consent Judgment, and  
19 each party shall bear its own costs and attorneys fees.

20 In the event that any third party, including the Attorney General or any  
21 other public enforcer, objects or otherwise comments to one or more provisions of this  
22 Agreement, Levitz agrees to undertake best efforts to satisfy such concerns or objections  
23 and support the terms of this Agreement. If Plaintiff incurs additional legal fees or costs as  
24 a result of any objections to this Consent Judgment ("Additional Fees"), Levitz agrees to  
25 meet and confer with Plaintiff regarding its reimbursement to Plaintiff and his counsel of  
26 any claimed Additional Fees. Should the parties not reach agreement within 30 days of

1 Plaintiff's written notice of any claimed Additional Fees, Plaintiff may file a motion under  
2 CCP § 1021.5 seeking an award of Additional Fees. Nothing in this Consent Judgment  
3 shall be construed as to relieve Plaintiff of his burden of demonstrating both the  
4 entitlement to and reasonableness of any such claimed Additional Fees.

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

1 Business & Profession Code §17200 and §17500 by LEVITZ. Provided, however, that  
2 DiPirro shall remain free to institute any form of legal action to enforce the provisions of  
3 this Consent Judgment.

4 **5. LEVITZ's Release Of Michael DiPirro.** LEVITZ, by this Agreement,  
5 waives all rights to institute any form of legal action against Michael DiPirro and his  
6 attorneys or representatives, for all actions or statements made by Michael DiPirro or his  
7 attorneys or representatives, in the course of seeking enforcement of Proposition 65 or  
8 Business & Profession Code §17200 and §17500 against LEVITZ in this litigation. Provided,  
9 however, that LEVITZ shall remain free to institute any form of legal action to enforce the  
10 provisions of this Consent Judgment.

11 **6. Court Approval.** If, for any reason, this Consent Judgment is not  
12 ultimately approved by the Court, this Agreement shall be deemed null and void.

13 **7. LEVITZ Sales Data.** LEVITZ understands that the sales data  
14 provided to counsel for DiPirro by LEVITZ was a material factor upon which DiPirro has  
15 relied to determine the amount of payments made pursuant to Health & Safety Code  
16 §25249.7(b) in this Agreement. To the best of LEVITZ's knowledge, the sales data provided  
17 is true and accurate. In the event that DiPirro discovers facts that demonstrate to a  
18 reasonable degree of certainty that the sales data is materially inaccurate, the parties shall  
19 meet in a good faith attempt to resolve the matter within ten (10) days of Levitz's receipt of  
20 notice from DiPirro of his intent to challenge the accuracy of the sales data. If this good  
21 faith attempt fails to resolve DiPirro's concerns, DiPirro shall have the right to re-institute  
22 an enforcement action against LEVITZ, for those additional Products, based upon any  
23 existing 60-Day Notices of violation served on LEVITZ. In such case, all applicable statutes  
24 of limitation shall be deemed tolled for the period between the date DiPirro filed the  
25 instant action and the date DiPirro notifies LEVITZ that he is re-instituting the action for  
26 the additional Products. Provided, however, that LEVITZ shall have no additional



1 liability, and DiPirro waives any claims that might otherwise be asserted, from the  
2 Effective Date until the date that DiPirro provides notice under this Paragraph 7, so long as  
3 LEVITZ has complied with the requirements of Paragraph 2 for all of the Products,  
4 including those numbers of Products additionally discovered.

5           **8. Severability.** In the event that any of the provisions of this  
6 Agreement is held by a court to be unenforceable, the validity of the enforceable provisions  
7 shall not be adversely affected.

8           **9. Attorney's Fees.** In the event that a dispute arises with respect to  
9 any provision(s) of this Agreement (including, but not limited to, disputes arising from  
10 payments to be made under this Agreement), reasonable attorneys' fees incurred from the  
11 resolution of such dispute shall be available to the prevailing party. This provision,  
12 however, shall not apply to the procedure set forth in Paragraphs 3.1 to 3.6 which are to be  
13 governed by the principles of CCP §1021.5.

14           **10. Governing Law.** The terms of this Agreement shall be governed by  
15 the laws of the State of California.

16           **11. Notices.** All correspondence to Michael DiPirro shall be mailed to:

17 Gregory M. Sheffer, Esq.  
18 Sheffer & Chanler LLP  
19 160 Sansome Street, 2<sup>nd</sup> Floor  
20 San Francisco, CA 94104-3706  
21 Tel: (415) 434-9111

22 All correspondence to LEVITZ shall be mailed to:

23 Neil S. Axelrod  
24 Associate General Counsel  
25 Levitz Home Furnishings, Inc.  
26 90 Price Parkway, Suite 1  
Farmingdale, NY 11735

With a copy to:

Jeffrey B. Margulies  
PARKER, MILLIKEN, CLARK, O'HARA & SAMUELIAN  
333 South Hope Street, 27th Floor  
Los Angeles, California 90071-1488

1                   **12. Compliance With Reporting Requirements (Health & Safety Code**  
2                   **§25249.7(f)).** The parties acknowledge that the reporting provisions of Health & Safety  
3                   Code § 25249.7(f) apply to this Consent Judgment. Counsel for DiPirro shall comply with  
4                   that Paragraph by submitting the required reporting form to, and serving a copy of this  
5                   Consent Judgment on, the California Attorney General's Office when noticing the *Motion to*  
6                   *Approve* hearing, if one is required by law.

7                   **13. Duties Limited to California.** This Consent Judgment shall have no  
8                   effect on Products sold by LEVITZ for use outside the State of California.

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

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

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

23                  **17. Authorization.** The undersigned are authorized to execute this  
24                  Agreement on behalf of their respective parties and have read, understood and agree to all  
25                  of the terms and conditions of this Agreement.  
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DATE: \_\_\_\_\_

LEVITZ FURNITURE CORPORATION  
DEFENDANT

\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

By: \_\_\_\_\_  
Robert N. Webber, Sr. Vice President

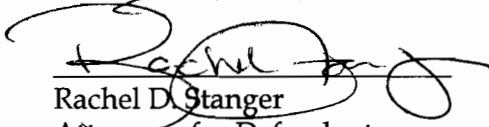
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DATE: 3/5/03

\_\_\_\_\_  
Gregory M. Sheffer  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

  
\_\_\_\_\_  
Rachel D. Stanger  
Attorneys for Defendant  
LEVITZ FURNITURE CORPORATION

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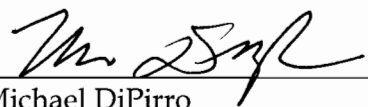
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DATE: 3/13/03

DATE: \_\_\_\_\_

LEVITZ FURNITURE CORPORATION  
DEFENDANT

  
\_\_\_\_\_  
Michael DiPirro  
PLAINTIFF

By: \_\_\_\_\_  
Robert N. Webber, Sr. Vice President

**APPROVED AS TO FORM:**

**APPROVED AS TO FORM:**

DATE: March 17, 2003

DATE: \_\_\_\_\_

  
\_\_\_\_\_  
Gregory M. Sheffer  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

\_\_\_\_\_  
Rachel D. Stanger  
Attorneys for Defendant  
LEVITZ FURNITURE CORPORATION

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AGREED TO:

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Michael DiPirro  
PLAINTIFF

APPROVED AS TO FORM:

DATE: \_\_\_\_\_

\_\_\_\_\_  
Gregory M. Sheffer  
Attorneys for Plaintiff  
MICHAEL DIPIRRO

AGREED TO:

DATE: 3/7/03

LEVITZ FURNITURE CORPORATION  
DEFENDANT

By: Robert N. Webber, Sr. V.P.  
Robert N. Webber, Sr. Vice President *Gen. Counsel*

APPROVED AS TO FORM:

DATE: 3/5/03

*Rachel D. Stanger*  
Rachel D. Stanger  
Attorneys for Defendant  
LEVITZ FURNITURE CORPORATION

**Exhibit A**

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**Tiffany-Style Glass and Metal Lamps**  
*(such as Lamp A Qui Glass)*

**Tiffany-Style Mica and Metal Lamps**  
*(such as Serenity T Stngls Acd)*