

## SETTLEMENT AGREEMENT

### 1. INTRODUCTION

#### 1.1 Dr. Leeman And Lyon Designs, Inc.

This Settlement Agreement is entered into by and between Whitney R. Leeman, Ph.D. (hereafter "Dr. Leeman" or "Leeman") and Lyon Designs, Inc., (hereafter "Lyon"), with Dr. Leeman and Lyon collectively referred to as the "Parties" and individually referred to as a "Party."

#### 1.2 Dr. Leeman

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

#### 1.3 Lyon Designs, Inc.

Lyon is a corporation that sells, among other things, glassware to consumers in California intended to be used for the consumption of food and beverages.

#### 1.4 General Allegations

Dr. Leeman alleges that Lyon has distributed and/or sold in the State of California certain glass containers with colored artwork or designs (containing lead) on the exterior. Lead (and/or lead compounds) is listed pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§25249.5 et seq. ("Proposition 65"), to cause cancer and birth defects and other reproductive harm. Lead (and/or lead compounds) shall be referred to herein as "Listed Chemicals."

#### 1.5 Products Descriptions

Only the three specific products known as (1) Green Eggs and Ham Mugs; (2) Wonder Woman Mugs; and (3) Dr. Seuss "New Tricks" Mugs are covered by this Settlement Agreement

and Release (with said products referred to herein as the "Products").

**1.6 Notices of Violation**

On or about April 25, 2003, Dr. Leeman served Lyon and various public enforcement agencies with a document entitled "60-Day Notice of Violation" (the "Notice") that provided Lyon and such public enforcers with notice that alleged that Lyon was in violation of California Health & Safety Code §25249.6 for failing to warn purchasers that certain products that Lyon sold expose users in California to lead and lead compounds.

**1.7 No Admission**

Lyon denies the material factual and legal allegations contained in Dr. Leeman's Notice and maintains that the Products that it has sold and distributed in California have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Lyon of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Lyon of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Lyon. Nothing in this Settlement Agreement shall apply to, or be used as evidence regarding compliance for, any other product sold, or offered for sale, by Lyon with Proposition 65 or any other statute or regulation. However, this Section shall not diminish or otherwise affect the obligations, responsibilities and duties of Lyon under this Settlement Agreement.

**1.8 Consent to Jurisdiction**

For purposes of this Settlement Agreement only, the Parties stipulate that the Superior Court of the State of California for the City and County of San Francisco has jurisdiction to enforce the provisions of this Settlement Agreement.

**1.9 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean August 20, 2004.

## 2. **INJUNCTIVE RELIEF**

2.1 After October 31, 2004, Lyon shall not sell or offer for sale in California the Products containing the Listed Chemicals in exterior decoration unless such Products comply with Sections 2.2, 2.3, or 2.4, below. Any Products still in Lyon's care, custody, or control, as of the Effective Date of this Agreement, shall not be sold in California, directly or indirectly, unless such Products comply with Sections 2.2, 2.3, or 2.4, below.

### 2.2 **Product Warnings**

Subject to Section 2.4 and Section 2.1, after October 31, 2004, Lyon shall not ship or otherwise cause to be sold any Products in California stores, unless warnings are provided as set forth below in Section 2.2.1 or Section 2.2.2.

#### 2.2.1 **Warning on the Products or Product Packaging**

A warning is affixed to the packaging, labeling or directly to or on the Products by the manufacturer, importer, or distributor of the Product, unless Lyon consents, in writing, to provide that warning itself, that states:

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

Warnings issued for the Products pursuant to this subsection shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of use or purchase. Any changes to the language or format of the warning required by this

subsection shall only be made with the approval of Dr. Leaman.

### **2.3 Mail Order and Internet Sales**

Subject to Section 2.4, after October 31, 2004, Lyon shall not sell or distribute the Products by mail order catalog or the Internet to California residents, unless warnings are provided as set forth below.

For the Products that require a warning pursuant to this Settlement Agreement that are sold by Lyon by mail order or from the Internet to California residents, a warning containing the language in subsection 2.2 shall be included, at Lyon's sole option, either: (a) in the mail order catalog (if any) or on the website (if any) pursuant to subsection 2.3.1 or 2.3.2; or (b) with the Products when any of them are shipped to an address in California pursuant to subsection 2.3.2. Any warnings given in the mail order catalogs or on the website shall identify the specific Products so as to minimize, if not eliminate, the chances that an overwarning situation will arise. If Lyon elects to provide warnings in the mail order catalog, then such warnings (at a location designated in subsection 2.3.1) shall be included in any new galley prints of such catalogs sent to the printer at least ten (10) business days after August 20, 2004. Nothing in this subsection 2.3 shall require Lyon to provide warnings for the Products ordered from a mail order catalog printed prior to August 20, 2004.

#### **2.3.1 Mail Order Catalog**

The Warning Message shall be stated within the catalog, either (a) on the inside front cover of any catalog, (b) on the same page as any order form, or (c) on the same page as the price, in the same type size as the surrounding, non-heading text, with the same language as that appearing in subsection 2.2.

#### **2.3.2 Internet Web Sites**

The warning text, or a link to a page containing the warning text, shall be

displayed either (a) on the same page on which the Products are displayed, (b) on the same page as any order form for the Products, (c) on the same page as the price for the Products, (d) on one or more pages displayed to a purchaser over the Internet or via electronic mail during the checkout and order confirmation process for sale of the Products, or (e) in any manner such that is likely to be read and understood by an ordinary individual under customary conditions of purchase of the Products, including the same language as that appearing in subsection 2.2. If a link is used, it shall state "Warning Information for California Residents," and shall be of a size equal to the size of other links on the page.

### **2.3.3 Package Insert or Label**

Alternatively, a warning may be provided with the Products when any of them are shipped directly to a consumer in California, by (a) Product labeling pursuant to subsection 2.2, above, (b) inserting a card or slip of paper measuring at least 4" x 6" in the shipping carton, or (c) including the warning on the packing slip or customer invoice identifying the Products in lettering of the same size as the description of the Products. The warning shall include the language appearing in subsection 2.2 and shall inform the consumer that he or she may return the Product(s) for a full refund within thirty (30) days of receipt.

### **2.4 Reformulated Products**

The Products shall be deemed to comply with Proposition 65 and be exempt from any Proposition 65 warning requirements under Sections 2.2 through 2.3, if:

### **2.4.1 Exterior Designs**

All designs applied to the exterior surface of the Products manufactured after the Effective Date, that are reasonably likely to be sold in California, shall contain less than 0.06% lead by weight in the decoration either before or after the decoration is applied to the Product, using a test method of sufficient sensitivity to establish a limit of quantitation of less than 600 parts per million ("ppm").

## **3. MONETARY PAYMENTS**

### **3.1 Penalties Pursuant To Health & Safety Code §25249.7(b)**

Pursuant to Health & Safety Code section 25249.7(b), Lyon shall pay \$6,000.00 in civil penalties on or before August 20, 2004, to be sent by overnight delivery, with the penalty payment made payable to "Chanler Law Group in Trust For Whitney R. Leeman."

### **3.2 Apportionment of Penalties Received**

All penalty monies received shall be apportioned by Dr. Leeman in accordance with Health & Safety Code § 25192, with 75% of these funds remitted by Dr. Leeman to the State of California's Office of Environmental Health Hazard Assessment and the remaining 25% of these penalty monies retained by Dr. Leeman as provided by Health & Safety Code § 25249.12(d). Dr. Leeman shall bear all responsibility for apportioning and paying to the State of California the appropriate civil penalties paid in accordance with this Section.

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

The Parties have reached an accord on the compensation due to Dr. Leeman and her counsel under the Private Attorney General doctrine codified at California Code of Civil Procedure § 1021.5 for all work performed through the Effective Date of the Agreement. Under the Private Attorney General doctrine, Lyon shall reimburse Dr. Leeman and her counsel for fees and costs incurred as a result of investigating, bringing this matter to Lyon's attention, and

negotiating a settlement in the public interest. Lyon shall pay Dr. Leeman and her counsel \$36,000.00 for all attorneys' fees, expert and investigation fees, and related costs. The payment shall be delivered to Dr. Leeman's counsel at the address set forth in Section 11, below, in installments of \$6,000.00 per month (or more, at the discretion of Lyon) beginning on September 1, 2004 and on the first of every month thereafter with the final full and complete payment made no later than February 1, 2005. Each payment shall be sent by overnight delivery so it is received on the due date. In the event Lyon defaults on any payment, this Agreement shall be null and void and any and all payments made pursuant to this Section may be retained by Dr. Leeman and her counsel.

5. **RELEASE OF ALL CLAIMS**

**5.1 Release of Lyon and Downstream Customers**

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4, Dr. Leeman, on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, and in the interest of the general public, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against Lyon and each of its vendors, suppliers, distributors, wholesalers, licensors, licensees, auctioneers, retailers (including, but not limited to, Urban Outfitters), franchisees, dealers, customers, owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees (collectively, "Releasees") arising under Proposition 65, Business & Professions Code § 17200 et seq. and Business & Professions Code

§ 17500 et seq., related to Lyon's alleged failures to warn about exposures to or identification of Listed Chemicals contained in the specific Products subject to this Settlement Agreement.

In addition, Dr. Leeman, on behalf of herself, her attorneys, and her agents, waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all Claims against any Releasee arising under Proposition 65, Business & Professions Code Section 17200 et seq., or Business & Professions Code Section 17500 et seq.. This waiver and release is null and void if Lyon does not comply with any of the terms of this Settlement Agreement, and Dr. Leeman shall remain free to institute any form of legal action to enforce the provisions of this Settlement Agreement and to seek damages for the breach of this Agreement by Lyon.

The Parties further agree and acknowledge that this Settlement Agreement is a full, final, and binding resolution of any violation of Proposition 65, Business & Professions Code §§ 17200 et seq. and Business & Professions Code §§ 17500 et seq., that have been or could have been asserted against Lyon for its alleged failure to provide clear and reasonable warnings of exposure to or identification of Listed Chemicals in the specific Products which are the subject of this Settlement Agreement. Provided however, Dr. Leeman shall remain free to institute any form of legal action to enforce the provisions of this Settlement Agreement.

It is specifically understood and agreed that the Parties intend that Lyon's compliance with the terms of this Settlement Agreement resolves all issues and liability, now and in the future (so long as Lyon complies with the terms of the Settlement Agreement) concerning Lyon's compliance with the requirements of Proposition 65, Business and Professions Code §§ 17200 et seq. and Business & Professions Code §§ 17500 et seq., as to the Listed Chemicals in the specific Products which are the subject of this Settlement Agreement.

#### 5.2 Lyon's Release of Dr. Leeman

Lyon waives all rights to institute any form of legal action against Dr. Leeman, her attorneys or representatives, for all actions taken or statements made by Dr. Leeman and her



attorneys or representatives, in the course of seeking enforcement of Proposition 65, Business & Professions Code §§ 17200 et seq., or Business & Professions Code §§ 17500 et seq..

6. **SEVERABILITY**

If any of the provisions of this Settlement Agreement are held by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

7. **ATTORNEYS' FEES**

In the event that a dispute arises with respect to any provision(s) of this Settlement Agreement, the prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable and necessary costs and reasonable attorneys' fees incurred from the resolution of such dispute.

8. **GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the specific Products subject to this Agreement, then Dr. Leeman and Lyon shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

9. **NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail, return receipt requested or (ii) overnight courier on any Party by the others at the following addresses:

To Lyon:

James Farmer, Esq.  
Holland & Hart LLP  
60 East South Temple, Suite 2000  
Salt Lake City, UT 84111-1031  
Fax: 801-364-9124

To Dr. Leeman:

Stephen S. Sayad, Esq.  
Chanler Law Group  
655 Redwood Highway, Suite 216  
Mill Valley, CA 94941

Any Party, from time to time, may specify in writing to the other Party a change of address to which all notices and other communications shall be sent.

**10. COUNTERPARTS; FACSIMILE SIGNATURES**

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

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

Dr. Leeman agrees to comply with the reporting form requirements referenced in Health & Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Dr. Leeman shall present this Settlement Agreement to the California Attorney General's Office within two (2) days after receiving all of the necessary signatures.

**12. MODIFICATION**

This Settlement Agreement may be modified only by written agreement of the Parties. The Attorney General shall be served with notice of any proposed modification to this Settlement Agreement.

13. **AUTHORIZATION**

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

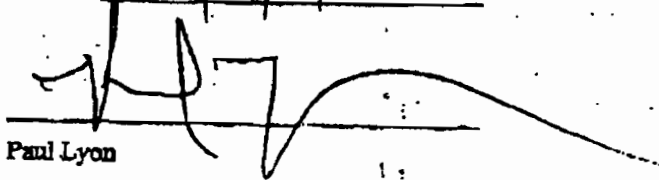
AGREED TO:

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

Whitney R. Leeman, Ph.D.


AGREED TO:

DATE: 8/19/04

  
\_\_\_\_\_  
Paul Lyon

APPROVED AS TO FORM:

DATE: 8/30/04

  
\_\_\_\_\_  
Stephen S. Sayad, Esq.  
Chanler Law Group  
Attorneys for Whitney R. Leeman, Ph.D.

13. **AUTHORIZATION**

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

AGREED TO:

DATE: 8/21/04

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

AGREED TO:

DATE: 8/19/04

Paul Lyon  
Paul Lyon

APPROVED AS TO FORM:

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

\_\_\_\_\_  
Stephen S. Sayad, Esq.  
Chanler Law Group  
Attorneys for Whitney R. Leeman, Ph.D.

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

**AGREED TO:**

DATE: 8/12/04

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

**AGREED TO:**

DATE: 8/19/04

Paul Lyon  
Paul Lyon

**APPROVED AS TO FORM:**

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

\_\_\_\_\_  
Stephen S. Sayad, Esq.  
Chanler Law Group  
Attorneys for Whitney R. Leeman, Ph.D.

**APPROVED AS TO FORM:**

DATE: August 19 2004

James Z. Farmer

James Farmer, Esq.  
Holland & Hart LLP  
Attorneys for Lyon Designs, Inc.