

1 David Bush, Esq. State Bar #154511
Jennifer Henry, Esq. State Bar #208221
2 BUSH & HENRY
4400 Keller Avenue, Suite 200
3 Oakland, CA 94605
Telephone: 510/577-0747
4 Facsimile: 510/577-0787

ENDORSED
FILED
ALAMEDA COUNTY

JUL 09 2001

5 Clifford A. Chanler, Esq. State Bar #135543
CHANLER LAW GROUP
6 Magnolia Lane (off Huckleberry Hill)
New Canaan, CT 06840-3801
7 Telephone: 203/966-9911
Facsimile: 203/801-5222

CLERK OF THE SUPERIOR COURT
By MAY CHOO Deputy

8 Attorneys for Plaintiff
9 MICHAEL DIPIRRO

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
12 **COUNTY OF ALAMEDA**
13

14 MICHAEL DIPIRRO, an individual,
15 Plaintiff,

16 vs.

17 QVC INC.; COMCAST CORPORATION;
18 and DOES 1 through 1000,
19 Defendants.

) Case No.: H217588-9 (Hayward)

) **CONSENT JUDGMENT**

20 This Consent Judgment ("Agreement" or "Consent Judgment") is entered into by and
21 between Michael DiPirro ("DiPirro"), a California citizen acting in the interest of the general
22 public and the public interest of the State of California; on the one hand, and QVC Inc.
23 ("QVC"), a Delaware corporation, on the other hand, as of June 29, 2001 (the "Effective
24 Date"). The parties agree to the following terms and conditions:
25
26
27
28

RECITALS

A. DiPirro is an individual residing in San Francisco, 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;

B. QVC is a company that currently offers for sale through electronic media the leaded glass crystal products intended for use with food and/or drink described in Exhibit A (the "Products"). Some of the Products have been available for purchase by California residents since at least December 29, 1996;

C. Comcast Corporation ("Comcast") is a Delaware corporation that is uninvolved in QVC's business, but is a direct or indirect shareholder of QVC;

D. On October 11, 2000, DiPirro asserts that he first served QVC and public enforcement agencies with a document entitled "60-Day Notice of Violation" which provided QVC and such agencies with notice that QVC was allegedly in violation of Health & Safety Code § 25249.6 for failing to warn purchasers in California that certain products it sells expose users to lead, a Proposition 65-listed chemical (the "Listed Chemical");

E. Upon receipt of the "60-Day Notice of Violation", QVC asserts that it immediately ceased shipment to California addresses of all items listed therein or reasonably believed to be otherwise covered by the "60-Day Notice of Violation;"

F. QVC asserts that prior to the receipt of the "60-Day Notice of Violation," it had instituted an environmental compliance program in order to fully comply with both federal and state environmental regulations;

G. On December 29, 2000, DiPirro filed a complaint entitled *Michael DiPirro v. QVC Inc., et al.* in the Alameda County Superior Court, Hayward Branch, bearing Case No. H217588-9 (the "Action"), naming QVC and Comcast as defendants and alleging violations of Business & Professions Code § 17200 and Health & Safety Code § 25249.6;

H. QVC denies that California courts have either general or limited personal jurisdiction over it, but has entered this Agreement based, *inter alia*, on *As You Sow v. Crawford Laboratories* (1996) 50 Cal.App.4th 1859.

TERMS

1. Product Warnings. Upon execution of this Agreement, QVC shall begin to take steps to revise its sale of the Products to provide the language set forth below. QVC agrees that, by September 15, 2001, it will not knowingly cause to be shipped into California any Products unless such Products bear or are accompanied by the following warning statement:

"WARNING: This product contains lead, a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)";

or

"WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects (or other reproductive harm)";

or

shall be permanently marked with the following warning

"Not For Food Use – article may poison food – for decorative purposes only."

The warning statement shall be prominently placed on or near the Products with such conspicuousness as to render it likely to be read and understood by an ordinary individual under customary conditions prior to use.

1.1 While not an exhaustive list of acceptable prominent placements of the warning statements set forth above, acceptable prominent locations include: (a) on a sticker or label placed on the exterior of either the shipping or original "retail" packaging containing the Product; or (b) on the packing slip included with the shipment.

1.2 Regardless of the location of the warning statement, QVC shall provide an offer of return and full refund within 30 days of receipt of the Product, in a manner likely to be read and understood by an ordinary individual under customary conditions prior to use.

1 **2. Payment Pursuant To Health & Safety Code § 25249.7(b).** Pursuant to
2 Health & Safety Code § 25249.7(b), QVC shall make a monetary contribution of \$26,200, to
3 be paid within five (5) calendar days after the Effective Date of this Agreement. Said sum
4 shall be held in trust by DiPirro's counsel until the Alameda County Superior Court approves
5 and enters the Consent Judgment in the Action. The contribution payment is to be made
6 payable to "Chanler Law Group In Trust For Michael DiPirro." If the Court does not
7 approve the Consent Judgment, DiPirro will return all funds, with interest thereon at a rate of
8 6% per annum, within ten (10) calendar days of notice of the Court's decision. DiPirro shall
9 apportion contribution monies in accordance with Health & Safety Code § 25192, with 75%
10 of these funds remitted to the State of California's Department of Toxic Substances Control.

11 QVC understands that the payment schedule as stated in this Consent Judgment is a
12 material factor upon which DiPirro has relied in entering into this Consent Judgment. QVC
13 agrees that all payments will be made in a timely manner in accordance with the payment
14 due dates. QVC will be given a five (5) calendar day grace period from the date payment is
15 due. QVC agrees to pay Michael DiPirro a \$250 per calendar day fee for each day the
16 payment is received after the grace period ends. For purposes of this paragraph, each new
17 day (requiring an additional \$250 payment) will begin at 5:00 p.m. (PST).

18 **3. Reimbursement of Fees and Costs.** The parties acknowledge that DiPirro
19 and his counsel offered to resolve the dispute without reaching terms on the amount of fees
20 and costs to be reimbursed, thereby leaving this open issue to be resolved after the material
21 terms of the agreement had been reached, and the matter settled. QVC then expressed a
22 desire to resolve the fee and cost issue concurrently with other settlement terms, so the
23 parties tried to (and did) reach an accord on the compensation due to DiPirro and his counsel
24 under the private attorney general doctrine codified at California Code of Civil Procedure
25 § 1021.5.

26 QVC shall reimburse DiPirro and his counsel for his fees and costs, incurred as a
27 result of investigating, bringing this matter to QVC's attention, litigating and negotiating a
28 settlement in the public interest. Therefore, QVC shall pay DiPirro \$48,800 for attorneys'

1 fees, expert and investigation fees, and litigation costs within five (5) days of the Effective
2 Date of the Agreement. Said sum shall be held in trust by DiPirro's counsel until the
3 Alameda County Superior Court approves and enters the Consent Judgment. If the Court
4 does not approve the Consent Judgment, DiPirro will return all funds, with interest thereon at
5 a rate of 6% per annum, within ten (10) calendar days of notice of the Court's decision.
6 Payment shall be made payable to the "Chanler Law Group."

7 QVC understands that the payment schedule as stated in this Consent Judgment is a
8 material factor upon which DiPirro and his counsel have relied in entering into this Consent
9 Judgment. QVC agrees that all payments will be made in a timely manner in accordance
10 with the payment due dates. QVC will be given a five (5) calendar day grace period from
11 the date payment is due. QVC agrees to pay Michael DiPirro and his counsel collectively a
12 \$250 per calendar day fee for each day the payment is received after the grace period ends.
13 For purposes of this paragraph, each new day (requiring an additional \$250 payment) will
14 begin at 5:00 p.m. (PST).

15 **4. Michael DiPirro's Release of QVC and Comcast.**

16 **4.1** Michael DiPirro, by this Agreement, on behalf of himself, his agents,
17 representatives, attorneys, assigns and in the interest of the general public and the public
18 interest of the State of California (hereinafter individually and collectively the "DiPirro
19 Releasers"), waives all rights to institute or participate in, directly or indirectly, any form of
20 legal action, and releases, acquits, and forever discharges QVC and Comcast, and (where
21 applicable) their respective parent, sister, subsidiary and affiliate companies (as that term is
22 defined in the rules and regulations of the Securities and Exchange Commission), and all of
23 their respective (where applicable) present and former officers, directors, shareholders,
24 partners, employees, agents, insurers, assigns, customers and attorneys, and (where
25 applicable) their respective heirs, executors, administrators and representatives, and each of
26 them (the "QVC Releasees"), of and from any and all causes of action, claims for relief,
27 lawsuits, charges, complaints, debts, liens, contracts, agreements, promises, liabilities,
28 demands, damages, losses, rights, benefits, obligations, attorneys' fees, costs or expenses of

1 any kind or nature whatsoever, in law, equity or otherwise, based on the California Safe
2 Drinking Water and Toxic Enforcement Act of 1986 (a.k.a. Proposition 65) and/or California
3 Business and Professions Code § 17200 et seq., whether known or unknown, whether or not
4 fixed or contingent, whether or not pending before a court, administrative agency,
5 government authority, or otherwise, which the DiPirro Releasors now own, hold, have or
6 claim to have, may claim to have, or at any time heretofore have owned, held, had or claimed
7 to have had, against QVC Releasees which arise out of or in any way are related to QVC or
8 Comcast's alleged failure to warn about exposure to the Listed Chemical contained in any of
9 the Products.

10 **4.2** Despite the broad nature of the foregoing release, nothing in this
11 Agreement shall be construed as a release of any or all of QVC's vendors from whom QVC
12 purchased the Products, or the manufacturers of such Products.

13 **5. QVC's Release of Michael DiPirro.** QVC, by this Agreement, waives all
14 rights to institute any form of legal action against Michael DiPirro and his attorneys or
15 representatives, for all actions or statements taken or made by Michael DiPirro and his
16 attorneys or representatives, prior to the Effective Date of this Agreement, in the course of
17 seeking enforcement of Proposition 65 or Business & Profession Code § 17200 against QVC
18 for matters related to the subject matter of the 60-Day Notice and the Action.

19 **6. Court Approval.** If, for any reason, this Consent Judgment is not approved by
20 the Court within 60 days from the Effective Date, this Agreement shall be deemed null and
21 void, and any payment(s) made by QVC under the terms of this Agreement shall be returned
22 within five (5) calendar days from the date of the Court's rejection of this Agreement.

23 **7. QVC Sales Data.**

24 **7.1** QVC understands that the sales data provided to counsel for DiPirro by
25 QVC was a material factor upon which DiPirro has relied to determine the amount of
26 payments made pursuant to Health & Safety Code § 25249.7(b) in this Agreement. To the
27 best of QVC's knowledge, the sales data provided is true and accurate. In the event that
28 DiPirro discovers facts which demonstrate to a reasonable degree of certainty that the sales

1 data is materially inaccurate, the parties shall meet in a good faith attempt to resolve the
2 matter within ten (10) days of QVC's receipt of notice from DiPirro of his intent to challenge
3 the accuracy of the sales data. If this good faith attempt fails to resolve DiPirro's concerns,
4 then the matter shall be submitted for final, neutral and binding arbitration (the
5 "Arbitration") in New York City, New York, under the Commercial Dispute rules of the
6 American Arbitration Association, which rules are hereby incorporated by reference. In
7 reaching a decision, the arbitrator shall follow the terms of this Agreement and applicable
8 federal and state law.

9 7.2 If the arbitrator determines that QVC provided materially inaccurate
10 sales data, then, and only then, shall DiPirro have the right to rescind the Agreement and re-
11 institute an enforcement action against QVC, if and only if all sums paid by QVC pursuant to
12 paragraphs 2 and 3, with interest thereon at a rate of 6% per annum, are returned to QVC
13 within ten (10) days from the date on which DiPirro notifies QVC of his intent to rescind this
14 Agreement. In such case, all applicable statutes of limitation shall be deemed tolled for the
15 period between the date DiPirro filed the instant action and 20 days after the arbitrator finds
16 that the QVC data was materially inaccurate.

17 7.3 The prevailing party in the Arbitration shall, in accordance with
18 Paragraph 9, be entitled to attorneys' fees and costs (including the cost of the arbitrator).

19 7.4 DiPirro understands and agrees that the QVC's sales data is confidential
20 and proprietary information of QVC, and is to be treated in accordance with the Protective
21 Order entered by the Court in this action.

22 23 8. **Product Characterization.**

24 8.1 DiPirro contends that each of the Products listed in Exhibit A contains
25 lead and that the customary use or application of the Products is likely to expose users to the
26 Listed Chemical.

27 8.2 If QVC obtains analytical, risk assessment or other data ("Exposure
28 Data") that shows an exposure to any or all Products poses "no significant risk" or will have

1 "no observable effect," as each such standard is applicable and as each is defined under
2 Health & Safety Code § 25249.10(c) and QVC seeks to eliminate the warnings required by
3 this Agreement, then QVC shall provide DiPirro with 90 days prior written notice of its
4 intent to limit or eliminate the warning provisions under this Agreement based on the
5 Exposure Data and shall provide DiPirro with all such supporting Exposure Data. Within 90
6 days of receipt of QVC's Exposure Data, DiPirro shall provide QVC with written notice of
7 his intent to challenge the Exposure Data (in the event that he chooses to make such a
8 challenge). If DiPirro fails to provide QVC written notice of his intent to challenge the
9 Exposure Data within 90 days of receipt of QVC's notice and the Exposure Data, DiPirro be
10 deemed to have waived all rights to challenge the Exposure Data, and QVC shall be entitled
11 to limit or eliminate the warning provisions required under this Agreement with respect to
12 those Product(s) to which the Exposure Data applies. If DiPirro timely notifies QVC of his
13 intent to challenge the Exposure Data, then (a) QVC may stop its efforts to eliminate the
14 warnings upon notice to DiPirro with no further liability or obligations or (b) QVC and
15 DiPirro shall negotiate in good faith for a period not to exceed 30 days following receipt of
16 QVC's notice to attempt to reach a settlement of this issue. If a settlement is not reached,
17 DiPirro and QVC agree to submit such challenge to the Alameda Superior Court for
18 determination, pursuant to the Alameda Superior Court's continuing jurisdiction of this
19 matter under C.C.P. § 664.6 and this Agreement. The prevailing party shall be entitled to
20 reasonable attorneys' fees and costs associated with bringing a motion brought under this
21 paragraph to the court for determination.

22 **9. Attorneys' Fees.** In the event that a dispute arises with respect to any
23 provision(s) of this Agreement or the Consent Judgment, the prevailing party shall be
24 entitled to recover costs and reasonable attorneys' fees.

25 **10. Governing Law.** The terms of this Agreement shall be governed by the
26 internal laws of the State of California, without regard to conflicts of law principles.

27 **11. Modification of Law.** In the event the applicable warning requirements under
28 Proposition 65 are subsequently amended or changed by statute, regulation, case law or court

1 order so as to materially affect the warning obligations imposed on QVC pursuant to
2 section 1 above, QVC shall be entitled to modify or remove the warnings provided herein to
3 the extent provided by the new law, regulation, case law or court order.

4 **12. Notices.** Any notice required or contemplated by this Consent Judgment shall
5 be given in writing by personal delivery or certified mail, return receipt requested, and shall
6 be deemed received on the date the notice is received and signed for. Notice shall be given
7 at the following addresses (which any party may change at any time by written notice):

8 To DiPirro: Mr. Michael DiPirro
9 c/o Bush & Henry
4400 Keller Avenue, Suite 200
10 Oakland, California 94605-4229
Telephone: 510/577-0747
11 Facsimile: 510/577-0787

12 With copy to: David Bush, Esq.
13 Bush & Henry
4400 Keller Avenue, Suite 200
14 Oakland, California 94605-4229
Telephone: 510/577-0747
15 Facsimile: 510/577-0787

16 -or-

17 Clifford A. Chanler, Esq.
18 Chanler Law Group
Magnolia Lane (Off Huckleberry Hill Road)
New Canaan, CT 06840
19 Telephone: 203/966-9911
Facsimile: 203/801-5222

20 To QVC: Neal S. Grabell, Esq.
21 Senior Vice President and General Counsel
QVC, Inc.
22 Studio Park
23 West Chester, Pennsylvania 19380

24 With copy to: Robert W. Barnes, Esq.
25 Resch Polster Alpert & Berger LLP
10390 Santa Monica Boulevard, Fourth Floor
26 Los Angeles, California 90025-5058
Telephone: 310/277-8300
27 Facsimile: 310/552-3209

1 **13. Compliance with Reporting Requirements.** The parties agree to comply with
2 the reporting form requirements referenced in Health & Safety Code § 25249.7(f). As of the
3 Effective Date, the California Attorney General's reporting forms are not available. DiPirro
4 will cause his counsel to send a copy of this Agreement to the California Attorney General's
5 Office prior to or concurrently with the submission of this Consent Judgment to the Alameda
6 County Superior Court. If the new reporting regulations (11 CCR § 3000 et seq.) go into
7 effect before the Effective Date, DiPirro shall present this Consent Judgment to the Alameda
8 County Superior Court 30 days after serving the Attorney General with a copy of this
9 Consent Judgment, thereby allowing the Attorney General to serve any objections to this
10 Consent Judgment prior to the end of the 30-day period.

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

14 **15. Authorization.** The undersigned each represent and warrant that they are
15 authorized to execute this Agreement on behalf of their respective parties and have read,
16 understood and agree to all of the terms and conditions of this Agreement.

17 **16. No Oral Modification.** All parties agree that any amendment or modification
18 to this Consent Judgment shall be deemed to be null and void unless such amendment or
19 modification is in writing, specifically refers to this Consent Judgment, and is signed by all
20 parties to be bound by the modification.

21 **17. Successors and Assigns.** Each of the parties understands, acknowledges, and
22 agrees that this Consent Judgment shall inure to the benefit of and shall be binding upon their
23 successors and assigns. Regardless of the foregoing, DiPirro's rights under this Agreement
24 shall not be assignable, and will cease upon the earlier of the expiration of 20 years from the
25 Effective Date or DiPirro's death.

26 **18. Survival of Warranties.** All representations and warranties contained in this
27 Consent Judgment shall survive its execution and delivery.

1 **19. Captions.** The captions used in this Consent Judgment are for convenience
2 only and shall not be deemed to be a part, or affect in any way the construction or
3 interpretation, of this Consent Judgment.

4 **20. No Admission.** Nothing in this Agreement shall be construed as an admission
5 by QVC of any fact, finding, conclusion, issue of law, or violation of law, nor shall
6 compliance with this Agreement constitute or be construed as an admission by QVC of any
7 fact, finding, conclusion, issue of law, or violation of law. However, this paragraph shall not
8 diminish or otherwise affect the obligations, responsibilities, and duties of QVC under this
9 Agreement.

10 **21. Miscellaneous.**

11 **21.1** The terms of this Consent Judgment have been negotiated at arm's
12 length among sophisticated parties. As a result, the rule of "interpretation against the
13 draftsman" shall not apply in any dispute over interpretation of the terms of this Consent
14 Judgment.

15 **21.2** The words "her," "his," "their" and similar words in this Consent
16 Judgment are not intended to be mutually exclusive and each of such words includes the
17 others.

18 **21.3** When necessary, all terms used in the singular shall apply to the plural,
19 the masculine shall include the feminine, and all terms used in the plural shall apply to the
20 singular.

21
22
23
24
25
26
27
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PARTIES

DATED: June __, 2001

QVC, INC.

By: _____
NEAL S. GRABELL
Senior Vice President and General Counsel

DATED: June 29, 2001



MICHAEL DiPIRRO

APPROVED AS TO FORM:
RESCH POLSTER ALPERT & BERGER LLP

By _____
Robert W. Barnes
Attorneys for QVC, Inc.

BUSH & HENRY

By _____
David Bush
Attorneys for Michael DiPirro

PARTIES

DATED: June 29, 2001

QVC, INC.

By: Neal S. Grabell
NEAL S. GRABELL
Senior Vice President and General Counsel

DATED: June __, 2001

MICHAEL DIPIRRO

APPROVED AS TO FORM:

RESCH POLSTER ALPERT & BERGER LLP

By Robert W. Barnes
Attorneys for QVC, Inc.

BUSH & HENRY

By David Bush
Attorneys for Michael DiPirro

PARTIES

DATED: June __, 2001

QVC, INC.

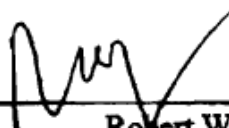
By: NEAL S. GRABELL
Senior Vice President and General Counsel

DATED: June __, 2001

MICHAEL DIPIRRO

APPROVED AS TO FORM:

RESCH POLSTER ALPERT & BERGER LLP

By 
Robert W. Barnes
Attorneys for QVC, Inc.

BUSH & HENRY

By  6/29/01
David Bush
Attorneys for Michael DiPirro

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

Leaded Glass Crystalware, the normal use of which is for consumption of food or drink