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ENDORSED  
FILED  
San Francisco County Superior Court

JUN 3 2005

GORDON PARK-LI, Clerk  
BY: GARTH SAYERS  
Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 IN AND FOR THE COUNTY OF SAN FRANCISCO  
13 UNLIMITED CIVIL JURISDICTION

14 WHITNEY R. LEEMAN, Ph.D., )

No. CGC-03-418025

15 )  
16 Plaintiff, )

**[PROPOSED] ORDER PURSUANT TO  
TERMS OF CONSENT JUDGMENT**

17 v. )

18 ARC INTERNATIONAL NORTH AMERICA )  
19 INC., SEARS ROEBUCK AND CO.; and )  
20 DOES 1 through 150, )

Date: June 3, 2005

Time: 9:00 a.m.

Dept: 501

Judge: Hon. James J. McBride

21 Defendants.  
22  
23  
24  
25  
26  
27  
28

1 In the above-entitled action, Plaintiff WHITNEY R. LEEMAN, Ph.D. and Defendant  
2 SEARS ROEBUCK AND CO. ("Settling Defendant"), having agreed through their respective  
3 counsel that judgment be entered pursuant to the terms of the Consent Judgment entered into by the  
4 above-referenced parties and attached hereto as **Exhibit A**; and after consideration of the papers  
5 submitted and the arguments presented, the Court finds that the settlement agreement set out in the  
6 attached Consent Judgment meets the criteria established by Senate Bill 471, in that:

- 7 1. The health hazard warning that is required by the Consent Judgment complies with  
8 Health & Safety Code section 25249.7 (as amended by Senate Bill 471);  
9 2. The reimbursement of fees and costs to be paid pursuant to the parties' Consent  
10 Judgment is reasonable under California law; and  
11 3. The civil penalty amount to be paid pursuant to the parties' Consent Judgment is  
12 reasonable,

13 IT IS HEREBY ORDERED that judgment be entered in this case, in accordance with the  
14 terms of the Consent Judgment, attached hereto as **Exhibit A**.

15 IT IS SO ORDERED.

16 Dated: **JUN 3 2005**

**JAMES J. McBRIDE**  
\_\_\_\_\_  
Hon. James J. McBride  
JUDGE OF THE SUPERIOR COURT



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Whitney R. Leeman, Ph.D.

10  
11 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
12 FOR THE CITY AND COUNTY OF SAN FRANCISCO

13 WHITNEY R. LEEMAN, Ph.D.,

Case No. CGC-03-418025

14  
15 Plaintiff,

**STIPULATION AND [PROPOSED]  
ORDER RE: CONSENT JUDGMENT**

16 v.

17 ARC INTERNATIONAL NORTH  
18 AMERICA INC., SEARS ROEBUCK AND  
CO.; and DOES 1 through 150,

19 Defendants.  
20

21 **1. INTRODUCTION**

22 **1.1 Plaintiff and Sears**

23 This Consent Judgment is entered into by and between plaintiff Whitney R. Leeman, Ph.D.  
24 (hereafter "Dr. Leeman" or "Leeman" or "Plaintiff") and Sears Roebuck and Co. (hereafter  
25 "Sears" or "Defendant"), with Plaintiff and Sears collectively referred to as the "Parties" and  
26 individually referred to as a "Party."

27 **1.2 Plaintiff**

28 Dr. Leeman is an individual residing in Sacramento, California, who seeks to promote

1 awareness of exposures to toxic chemicals and improve human health by reducing or eliminating  
2 hazardous substances contained in consumer and industrial products.

3 **1.3 Defendant**

4 Sears is a corporation that sells, among other things, glassware intended to be used for the  
5 consumption of food and beverages to consumers in California. Sears operates stores in  
6 California.

7 **1.4 General Allegations**

8 Plaintiff alleges that Sears has distributed and/or sold in the State of California certain  
9 tumblers, stemware and other glassware with colored artwork or designs (containing lead) on the  
10 exterior. Lead (and/or lead compounds) are listed pursuant to the Safe Drinking Water and Toxic  
11 Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 et seq. ("Proposition 65"),  
12 to cause cancer and birth defects and other reproductive harm. Lead (and/or lead compounds)  
13 shall be referred to herein as "Listed Chemicals."

14 **1.5 Products Descriptions**

15 The products identified on Exhibit A are covered by this Consent Judgment (with such  
16 products collectively referred to herein as the "Products").

17 **1.6 Notices of Violation**

18 On or about February 7, 2003, Dr. Leeman served Sears and various public enforcement  
19 agencies with documents, entitled "60-Day Notice of Violation" ("Notice") that provided Sears  
20 and such public enforcers with notice that alleged that Sears was in violation of Health & Safety  
21 Code § 25249.6 for failing to warn purchasers that certain products that it sold expose users in  
22 California to lead and lead compounds.

23 **1.7 Complaint**

24 On March 5, 2003, Dr. Leeman, in the interest of the general public in California, filed a  
25 complaint (hereafter referred to as "Complaint" or the "Action") in the Superior Court for the City  
26 and County of San Francisco against Sears alleging violations of Health & Safety Code § 25249.6  
27 based on the alleged exposures to one or more of the Listed Chemicals contained in certain  
28 products sold by Sears. On or before February 15, 2005, Dr. Leeman will be serving a

1 Supplemental Notice on Sears and all required public enforcers expanding Plaintiff's prior  
2 allegation concerning the products to include alleged exposures to cadmium ("Supplemental  
3 Notice"). Upon the running of the 60-day period associated with the issuance of the Supplemental  
4 Notice, and provided that no authorized public enforcer of Proposition 65 initiates an action  
5 against Sears based on the additional allegations therein contained in the interim, the above-  
6 captioned Complaint and this Consent Judgment shall be deemed such that the definition of  
7 "Listed Chemicals" as used herein shall likewise be deemed to have been expanded from lead  
8 (and/or lead compounds) to include the listed chemical, cadmium, as well.

9 **1.8 No Admission**

10 Sears denies the material factual and legal allegations contained in Plaintiff's Notice and  
11 Complaint and maintains that all products that it has sold and distributed in California, including  
12 the Products, have been and are in compliance with all laws. Nothing in this Consent Judgment  
13 shall be construed as an admission by Sears or any Defendant Releasee (as defined in subsection  
14 5.1) of any fact, finding, issue of law, or violation of law, nor shall compliance with this  
15 Agreement constitute or be construed as an admission by Sears or any Defendant Releasee of any  
16 fact, finding, conclusion, issue of law or violation of law, such being specifically denied by Sears.  
17 However, this paragraph shall not diminish or otherwise affect: (1) any of the obligations,  
18 responsibilities, and duties of Sears under this Agreement; nor (2) the plaintiff's fee and cost  
19 application to be brought under CCP §1021.5 as set forth in section 4 below.

20 **1.9 Consent to Jurisdiction**

21 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
22 jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction  
23 over Sears as to the acts alleged in the Complaint, that venue is proper in the County of  
24 San Francisco, and that this Court has jurisdiction to enter this Consent Judgment and to enforce  
25 the provisions thereof.

26 **1.10 Effective Date**

27 For purposes of this Consent Judgment, the term "Effective Date" shall mean February 5,  
28 2005.

1 **2. INJUNCTIVE RELIEF**

2 **2.1** After the Effective Date, Sears shall not sell or offer for sale in California any of  
3 the Products containing the Listed Chemicals in exterior decorations unless such Products comply  
4 with Sections 2.2, 2.3 or 2.4, below.

5  
6 **2.2 Product Warnings**

7 Subject to Section 2.4, after the Effective Date, Sears shall not sell any of the Products in  
8 its California stores, unless warnings are provided as set forth below in subsection 2.2.1 or 2.2.2.

9 **2.2.1 Warning on the Products or Product Packaging**

10 A warning is affixed to the packaging, labeling or directly to or on a Product by the  
11 manufacturer, importer, distributor or Sears that states:

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

15 **or**

16 **WARNING: The materials used as colored decorations on the exterior**  
17 **of these products contain lead, a chemical known to the**  
18 **State of California to cause birth defects or other**  
19 **reproductive harm.<sup>1</sup>**

20 **or**

21 **WARNING: The materials used as colored decorations on the exterior**  
22 **of the following glassware products contain lead, a**  
23 **chemical known to the State of California to cause birth**  
24 **defects or other reproductive harm.**

25 Warnings issued for Products pursuant to this subsection shall be prominently placed with such  
26 conspicuousness as compared with other words, statements, designs, or devices as to render it  
27 likely to be read and understood by an ordinary individual under customary conditions of use or  
28 purchase. Any changes to the language or format of the warning required by this subsection shall  
only be made following: (1) approval of Plaintiff; or (2) approval from the California Attorney  
General's Office, provided that written notice of at least fifteen (15) days is given to Plaintiff for

<sup>1</sup> This formulation of the warning may only be used with respect to Products when sold as a set.

1 the opportunity to comment; or (3) Court approval pursuant to Section 15.

2 **2.2.2 Point-of-Sale Warnings**

3 Sears may execute its warning obligations, where applicable, through the  
4 posting of signs at retail outlets in the State of California at which Products are sold, with one or  
5 more signs posted at or near the point of sale or display of the Products that state:

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

10 or

11 **WARNING: The materials used as colored decorations on the exterior**  
12 **of glassware products sold in this store contain lead, a**  
13 **chemical known to the State of California to cause birth**  
14 **defects or other reproductive harm.<sup>2</sup>**

15 or

16 **WARNING: The materials used as colored decorations on the exterior**  
17 **of the following glassware products sold in this store**  
18 **contain lead, a chemical known to the State of California**  
19 **to cause birth defects or other reproductive harm; [list**  
20 **Products here].**

21 Any warnings provided by store signage shall identify the *specific* Products to which the warning  
22 applies so as to minimize, if not eliminate, the chances that an overwarning situation will arise

23 **2.3 Mail Order and Internet Sales**

24 Subject to Section 2.4, after the Effective Date, Sears shall not sell or distribute any of the  
25 Products by mail order catalog or the Internet to California residents, unless warnings are provided  
26 as set forth below.

27 For Products that require a warning pursuant to this Consent Judgment and that are sold by  
28 Sears by mail order or from the Internet to California residents, a warning containing the language  
in Section 2.2 shall be included, at Sears' 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 Product when it is  
shipped to an address in California pursuant to subsection 2.3.3. Any warnings given in the mail

<sup>2</sup> This formulation of the warning may only be used where the store in which the Products are sold sells only Products not included in Section 2.4.



1 order catalogs or on the website shall identify the *specific* Products to which the warning applies  
2 so as to minimize, if not eliminate, the chances that an overwarning situation will arise. If Sears  
3 elects to provide warnings in the mail order catalog, then such warnings (at a location designated  
4 in subsection 2.3.1) shall be included in any new galley prints of such catalogs sent to the printer  
5 at least ten (10) business days after notice of entry of this Consent Judgment is served on Sears.  
6 Nothing in this Section 2.3 shall require Sears to provide warnings for any Product ordered from a  
7 mail order catalog printed prior to the date notice of entry of this Consent Judgment is served on  
8 Sears, or to modify any such mail order catalogs.

### 9 **2.3.1 Mail Order Catalog**

10 The warning message shall be stated within the catalog, either (a) on the inside  
11 front cover of any catalog, (b) on the same page as any order form, or (c) on the same page as the  
12 price, in the same type size as the surrounding, non-heading text, with the same language as that  
13 appearing in Section 2.2.<sup>3</sup> Any warnings given in the catalogue on such signs shall identify the  
14 *specific* Products to which the warning applies so as to minimize, if not eliminate, the chances that  
15 an overwarning situation will arise.

### 16 **2.3.2 Internet Web Sites**

17 The warning text, or a link to a page containing the warning text, shall be displayed  
18 either (a) on the same page on which a Product is displayed, (b) on the same page as any order  
19 form for a Product, (c) on the same page as the price for any Product, (d) on one or more pages  
20 displayed to a purchaser over the Internet or via electronic mail during the checkout and order  
21 confirmation process for sale of a Product, or (e) in any manner such that it is likely to be read and  
22 understood by an ordinary individual under customary conditions of purchase of a Product,  
23 including the same language as that appearing in Section 2.2. If a link is used, it shall state  
24 "Warning information for California residents," and shall be of a size equal to the size of other  
25 links on the page. The warning shall identify the *specific* Products to which the warning applies  
26 so as to minimize, if not eliminate, the chances that an overwarning situation will arise.

### 27 **2.3.3 Package Insert or Label**

28 <sup>3</sup> The restriction set forth in footnote 1 above applies in this context as well.

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

8           **2.4    Reformulated Products**

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

11           **2.4.1** Any such Product was manufactured prior to the Effective Date with the  
12 exception of the five products subject to the recall provisions in Section 2.5.

13           **2.4.2   Exterior Designs (Excluding the Lip and Rim Area)**

14           All designs applied to the exterior surface (excluding the lip and rim area) of  
15 Products manufactured after the Effective Date, containing less than 0.06% lead by weight and  
16 less than 0.08% by weight of cadmium in the decoration either before or after the decoration is  
17 applied to the Product, using a test method of sufficient sensitivity to establish a limit of  
18 quantitation of less than 600 ppm. EPA Test Method 3050 will qualify under this provision.

19           **2.4.3   Exterior Designs Within the Lip and Rim Area, Including Restrictions  
20 for Both Lead and Cadmium in Any Decorations**

21           All drinkware Products manufactured after the Effective Date, that are reasonably  
22 likely to be sold in California, not containing designs on the exterior surface within the top twenty  
23 (20) millimeters of the external rim of the drinkware unless:

24           (a) those designs do not contain any detectable lead or cadmium. For  
25 purposes of this subsection, "no detectable lead or cadmium" shall mean that neither lead nor  
26 cadmium is detected at a level (a) above .06% (for lead) or .08% (for cadmium) by weight,  
27 respectively, either before or after the decoration is applied to the Product, using a test method  
28

1 (EPA Test Method 3050) of sufficient sensitivity to establish a limit of quantitation of less than  
2 200 ppm, or

3 (b) such drinkware has less than a total of sixty (60) millimeters of  
4 design area below the external rim and which is not “intended or marketed primarily for use by  
5 children” (e.g., shot glasses); provided, however, that to be so excluded, such drinkware shall, as  
6 of the Effective Date, only be sold with decorations containing less than 0.06% lead by weight,  
7 either before or after the decoration is applied to the drinkware using a test method (EPA Test  
8 Method 3050) of sufficient sensitivity to establish a limit of quantitation of less than 600 ppm.

9 **2.4.4 Products Supplied by Settling Non-Retailers in *ARC International***

10 Reformulated Products shall include Products manufactured by or purchased from  
11 any Settling Non-Retailer under *Whitney R. Leeman, Ph.D. vs. ARC International North America*  
12 *Inc., et al.*, San Francisco Superior Court Consolidated Case No. CGC-003-418025 on or after the  
13 Effective Date, except such products under subsection 2.1.E.(i) [Limited Exclusion] of the  
14 Consent Judgment in that case.

15 **2.4.5 Future Settlements or Standards**

16 Should any court of this state enter an order in a case brought by the People of the  
17 State of California that sets forth standards defining when Proposition 65 warnings will or will not  
18 be required for products substantially similar to the type and function of the Products at issue here  
19 ("Alternative Standards"), or if the California Attorney General's Office or Office of  
20 Environmental Health Hazard Assessment ("OEHHA") otherwise provide written endorsement  
21 (i.e. a writing that is circulated by the Attorney General that is not intended for the purpose of  
22 soliciting further input or comments) of Alternative Standards applicable to products that are of  
23 the same type and function as the Products, Sears shall be entitled to seek a modification of this  
24 Consent Judgment so as to be able to utilize and rely on such Alternative Standards in lieu of those  
25 set forth in subsections 2.4.2 and 2.4.3. Dr. Leeman shall not unreasonably withhold consent to  
26 any proposed stipulation to effectuate such a modification.

27 **2.5 Recall of Sears' Direct Import Glassware Containing Lead Paint**

28 Sears agrees to immediately begin to take the five hand-painted glassware products

1 specifically listed on Exhibit A off its retail shelves in California and, in no event, may Sears sell  
2 any of these decorated glassware products in California after the Effective Date.

3 **3. MONETARY PAYMENTS**

4 **3.1 Penalties Pursuant to Health & Safety Code § 25249.7(b)**

5 Pursuant to Health & Safety Code section 25249.7(b), Sears shall pay a total of \$28,000 in  
6 civil penalties in three installments, with the first penalty payment of \$7,000 to be made not later  
7 than five (5) days following the Effective Date hereof, and made payable to "Chanler Law Group  
8 in Trust For Whitney R. Leeman." The second penalty payment of \$7,000 shall be paid within 5  
9 days of approval by the Court of this Consent Judgment, and made payable to "Chanler Law  
10 Group in Trust For Whitney R. Leeman." The third penalty payment in the amount of \$14,000  
11 will be paid on or before February 15, 2006; however, such payment shall be waived in the event  
12 that Sears certifies on or before February 10, 2006, that 80% or more of any Products it sold in  
13 California during the preceding 12 month period were Reformulated Products. Any such  
14 certification with respect to the percentage of Reformulated Products sold shall specify the  
15 Product (by Product name, SKU or UPC Code) and the number of units sold for each such  
16 Product.

17 **3.2 Apportionment of Penalties Received**

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

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

25 4.1 The Parties acknowledge that Plaintiff and his counsel offered to resolve this  
26 dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby  
27 leaving this fee issue to be resolved after the material terms of the agreement had been settled.  
28 Sears then expressed a desire to resolve the fee and cost issue shortly after the other settlement

1 terms had been finalized. The Parties then attempted to (and did) reach an accord on the  
2 compensation due to Plaintiff and his counsel under the private attorney general doctrine codified  
3 at Code of Civil Procedure § 1021.5 for all work performed through the Effective Date of the  
4 Agreement. Under the private attorney general doctrine codified at Code of Civil Procedure  
5 § 1021.5, Sears shall reimburse Plaintiff and his counsel for fees and costs, incurred as a result of  
6 investigating, bringing this matter to Sears's attention, litigating and negotiating a settlement in the  
7 public interest. Sears shall pay Plaintiff and her counsel \$48,800.00 for all attorneys' fees, expert  
8 and investigation fees, and litigation costs. The payment shall be made payable to the "Chanler  
9 Law Group" and shall be delivered to Plaintiff's counsel in two installments with \$24,400.00  
10 being paid within five (5) days of the Effective Date and the remaining \$24,400.00 being due  
11 within five (5) days of approval by the Court.

12 4.2 Except as specifically provided in this Consent Judgment, Sears shall have no  
13 further obligation with regard to reimbursement of Plaintiff's attorney's fees and costs with regard  
14 to the Products covered in this Action.

15 **5. RELEASE OF ALL CLAIMS**

16 **5.1 Release of Sears**

17 In further consideration of the promises and agreements herein contained, and for the  
18 payments to be made pursuant to Sections 3 and 4, Plaintiff, on behalf of herself, her past and  
19 current agents, representatives, attorneys, successors and/or assignees, and in the interest of the  
20 general public, hereby waives all rights to institute or participate in, directly or indirectly, any  
21 form of legal action and releases all claims, including, without limitation, all actions, causes of  
22 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,  
23 losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys'  
24 fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively  
25 "Claims"), against Sears and each of its vendors, suppliers, distributors, wholesalers, licensors,  
26 licensees, auctioneers, retailers, franchisees, dealers, customers, owners, purchasers, users, parent  
27 companies, corporate affiliates, subsidiaries and their respective officers, directors, attorneys,  
28 representatives, shareholders, agents, and employees (collectively, "Defendant Releasees") arising

1 under Proposition 65, Business & Professions Code §§ 17200 et seq. and Business & Professions  
2 Code §§ 17500 et seq., related to Sears' or any Defendant Releasee's alleged failure to warn about  
3 exposures to or identification of Listed Chemicals contained in the Products sold at Sears' outlets  
4 in California.

5 The Parties further agree and acknowledge that this Consent Judgment is a full, final, and  
6 binding resolution of any violation of Proposition 65, Business & Professions Code §§ 17200 et  
7 seq. and Business & Professions Code §§ 17500 et seq., that have been or could have been  
8 asserted in the Complaint against Sears for its alleged failure to provide clear and reasonable  
9 warnings of exposure to or identification of Listed Chemicals in the Products sold at Sears' outlets  
10 in California.

11 In addition, Plaintiff, on behalf of herself, her attorneys, and her agents, waives all rights to  
12 institute or participate in, directly or indirectly, any form of legal action and releases all Claims  
13 against any Defendant Releasee arising under Proposition 65, Business & Professions Code  
14 §§ 17200 et seq. and Business & Professions Code §§ 17500 et seq., related to any Defendant  
15 Releasee's alleged failures to warn about exposures to or identification of Listed Chemicals  
16 contained in the Products sold at Sears' outlets in California and for all actions or statements made  
17 by Sears or its attorneys or representatives, in the course of responding to alleged violations of  
18 Proposition 65, Business & Professions Code §§ 17200 or Business & Professions Code §§ 17500  
19 by Sears. Provided however, Plaintiff shall remain free to institute any form of legal action to  
20 enforce the provisions of this Consent Judgment.

21 It is specifically understood and agreed that the Parties intend that Sears' compliance with  
22 the terms of this Consent Judgment resolves all issues and liability, now and in the future (so long  
23 as Sears complies with the terms of the Consent Judgment) concerning Sears and any Defendant  
24 Releasee's compliance with the requirements of Proposition 65, Business and Professions Code  
25 §§ 17200 et seq. and Business & Professions Code §§ 17500 et seq., as to the Listed Chemicals in  
26 the Products.

27 This section shall not be construed to limit Dr. Leeman and her counsel's application for  
28 fees and costs under CCP §1021.5 as set forth in this Agreement.

1           **5.2    Sears' Release of Plaintiff**

2           Sears waives all rights to institute any form of legal action against Plaintiff, her attorneys  
3 or representatives, for all actions taken or statements made by Plaintiff and her attorneys or  
4 representatives, in the course of seeking enforcement of Proposition 65, Business & Professions  
5 Code §§ 17200 et seq. or Business & Professions Code §§ 17500 et seq. in this Action.

6           **6.    COURT APPROVAL**

7           This Consent Judgment is not effective until it is approved and entered by the Court and  
8 shall be null and void if, for any reason, it is not approved and entered by the Court within one  
9 year after it has been fully executed by all Parties, in which event any monies that have been  
10 provided to Plaintiff or her counsel pursuant to Sections 3 or 4, above, shall be refunded within  
11 fifteen (15) days.

12          **7.    SEVERABILITY**

13          If, subsequent to court approval of this Consent Judgment, any of the provisions of this  
14 Consent Judgment are held by a court to be unenforceable, the validity of the enforceable  
15 provisions remaining shall not be adversely affected.

16          **8.    ATTORNEYS' FEES**

17          In the event that a dispute arises with respect to any provision(s) of this Consent Judgment,  
18 the prevailing party shall, except as otherwise provided herein, be entitled to recover reasonable  
19 and necessary costs and reasonable attorneys' fees incurred from the resolution of such dispute.  
20 This paragraph shall not apply to the CCP §1021.5 fee application which shall be governed by  
21 controlling law and provides for the moving party to be compensated for bringing the fee  
22 application.

23          **9.    ENFORCEMENT OF CONSENT JUDGMENT WITH REGARD TO RETAIL**  
24               **STORES IN CALIFORNIA**

25          **9.1**    Before moving to enforce the terms and conditions of Section 2 of this Consent  
26 Judgment against Sears with respect to an alleged violation occurring at a retail outlet (defined  
27 below) located in California, Plaintiff and others must follow the procedures set forth in Sections  
28 9.2 through 9.4.

1           **9.2**     In the event that Plaintiff and/or her attorneys, agents, assigns, or any other person  
2 acting in the public interest under Health & Safety Code § 25249.7(d), (hereinafter "Notifying  
3 Person") identify one or more retail stores in California operated by Sears or a Defendant Releasee  
4 (hereinafter "retail outlet") at which Products are sold which do not meet the requirements of this  
5 Consent Judgment, such Notifying Person shall notify, in writing, Sears of such alleged failure to  
6 comply (the "Notice of Breach"). Within sixty (60) days of the date the alleged violation was  
7 observed, a Notice of Breach shall be served by first class mail, with proof of service, to the  
8 persons set forth in Section 11, below. The Notice of Breach shall identify the date the alleged  
9 violation was observed and the retail outlet in question, and reasonably describe the nature of the  
10 alleged violation with sufficient detail, to allow Sears to determine the basis of the claim being  
11 asserted and the identities of the type of Products to which those assertions apply, along with the  
12 name of the specific product alleged to violate this Agreement.

13           **9.3**     In the event that the Notifying Person identifies a specific retail outlet, other than  
14 the specific one identified in Section 9.2 of this Consent Judgment, selling other Products not  
15 compliant with this Consent Judgment, such Notifying Person shall serve Sears with another  
16 Notice of Breach in the manner and with the information required in Section 9.2 and provide the  
17 information required in Section 9.2.

18           The Notifying Person shall take no further action against Sears or Defendant  
19 Releasees unless the Notifying Person discovers, no less than thirty (30) days nor greater than six  
20 (6) months after service of the Notices of Breach served pursuant to Sections 9.2 or 9.3, another  
21 failure to comply with the type of Products previously identified by the Notifying Person whether  
22 or not the alleged failure to comply is at the same retail outlet(s) identified in the Notices of  
23 Breach served pursuant to Sections 9.2 and 9.3.

24     **10.    GOVERNING LAW**

25           The terms of this Consent Judgment shall be governed by the laws of the State of  
26 California and apply within the State of California. In the event that Proposition 65 is repealed or  
27 is otherwise rendered inapplicable by reason of law generally, or as to the Products specifically,  
28 then Sears shall have no further obligations pursuant to this Consent Judgment with respect to, and



1 to the extent that, those Products are so affected.

2 **11. NOTICES**

3 All correspondence and notices required to be provided pursuant to this Consent Judgment  
4 shall be in writing and personally delivered or sent by: (1) first-class, registered, certified mail,  
5 return receipt requested, or (ii) overnight courier on any Party by the others at the following  
6 addresses:

7 To Sears:

8 David. F. Wood  
9 Wood, Smith, Henning & Berman  
10 355 South Grand Avenue, 25<sup>th</sup> Floor  
Los Angeles, CA 90071

11 To Plaintiff:

12 Clifford A. Chanler  
13 Chanler Law Group  
14 71 Elm Street, Suite 8  
New Canaan, CT 06840

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

17 **12. COUNTERPARTS; FACSIMILE SIGNATURES**

18 This Consent Judgment may be executed in counterparts and by facsimile, each of which  
19 shall be deemed an original, and all of which, when taken together, shall constitute one and the  
20 same document.

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

22 Plaintiff agrees to comply with the reporting form requirements referenced in Health &  
23 Safety Code § 25249.7(f). Pursuant to regulations promulgated under that section, Plaintiff shall  
24 present this Consent Judgment to the California Attorney General's Office within two (2) days  
25 after receiving all of the necessary signatures. A noticed motion to enter the Consent Judgment  
26 will then be served on the Attorney General's Office at least forty-five (45) days prior to the date a  
27 hearing is scheduled on such motion in the Superior Court for the City and County of  
28 San Francisco unless the Court allows a shorter period of time.

1 **14. ADDITIONAL POST EXECUTION ACTIVITIES**

2 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed  
3 motion is required to obtain judicial approval of this Agreement. The Parties shall mutually  
4 employ their best efforts to support the entry of this Agreement as a Consent Judgment and obtain  
5 approval of the Consent Judgment by the Court in a timely manner. It is further noted that Sears  
6 requested that Dr. Leeman prepare and file the Motion To Approve this Agreement (“Motion”).  
7 In so doing, Sears agrees to continue use its best efforts to support the Motion.  
8

9 **15. MODIFICATION**

10 This Consent Judgment may be modified only by: (1) written agreement of the Parties and  
11 upon entry of a modified Consent Judgment by the Court thereon, or (2) motion of any Party as  
12 provided by law and upon entry of a modified Consent Judgment by the Court. The Attorney  
13 General shall be served with notice of any proposed modification to this Consent Judgment at least  
14 fifteen (15) days in advance of its consideration by the Court.  
15

16 **16. AUTHORIZATION**

17 The undersigned are authorized to execute this Consent Judgment on behalf of their  
18 respective Parties and have read, understood and agree to all of the terms and conditions of this  
19 Consent Judgment.

20 **AGREED TO:**

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

22 \_\_\_\_\_  
Plaintiff Whitney R. Leeman, Ph.D.

23 **AGREED TO:**

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

25 \_\_\_\_\_  
26 Defendant Sears Roebuck and Co.  
27  
28

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15

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17 The undersigned are authorized to execute this Consent Judgment on behalf of their  
18 respective Parties and have read, understood and agree to all of the terms and conditions of this  
19 Consent Judgment.

20 **AGREED TO:**

21 DATE: 11/21/05

22 Whitney R. Leeman  
Plaintiff Whitney R. Leeman, Ph.D.

23 **AGREED TO:**

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

25 \_\_\_\_\_  
26 Defendant Sears Roebuck and Co.  
27  
28

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17 The undersigned are authorized to execute this Consent Judgment on behalf of their  
18 respective Parties and have read, understood and agree to all of the terms and conditions of this  
19 Consent Judgment.

20 **AGREED TO:**

21 **DATE:** \_\_\_\_\_

22 \_\_\_\_\_  
Plaintiff Whitney R. Leeman, Ph.D.

23 **AGREED TO:**

24 **DATE:** 1/21/65

25 \_\_\_\_\_  
26   
27 Defendant Sears Roebuck and Co.  
28

1 APPROVED AS TO FORM:

2 DATE: 1/20/05

3 Cliff Chanler

4 Clifford Chanler  
Chanler Law Group  
5 Attorneys for Plaintiff Whitney R. Leeman, Ph.D.

6 APPROVED AS TO FORM:

7  
8 DATE: \_\_\_\_\_

9  
10 David F. Wood  
Wood, Smith, Henning & Berman  
Attorneys for Defendant Sears Roebuck & Co.

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1 APPROVED AS TO FORM:

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

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4 Clifford Chanler  
Chanler Law Group  
5 Attorneys for Plaintiff Whitney R. Leeman, Ph.D.

6

APPROVED AS TO FORM:

7

8 DATE: 1/24/08

9 

10 David F. Wood  
Wood, Smith, Henning & Berman  
Attorneys for Defendant Sears Roebuck & Co.

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**EXHIBIT A**

Glassware beverage containers with applied or painted colored decorations on the exterior, non-food contact surface that contain lead in the decorations including:

- 1. Sears Direct Import – Rose Glasses (#52150)
- 2. Sears Direct Import – Snowman (#53930)
- 3. Sears Direct Import – Penguins (#53934)
- 4. Sears Direct Import – Christmas (#53941)
- 5. Sears Direct Import – Harmony (#53942)

1 Stephen S. Sayad, State Bar No. 104866  
Daniel M. Bornstein, State Bar No. 181711  
2 Laralei S. Paras, State Bar No. 203319  
PARAS LAW GROUP  
3 655 Redwood Highway, Suite 216  
Mill Valley, CA 94941  
4 Tel: (415) 380-9222  
Fax: (415) 380-9223

5 Clifford A. Chanler, State Bar No. 135534  
CHANLER LAW GROUP  
6 71 Elm Street, Suite 8  
7 New Canaan, CT 06840  
Tel: (203) 966-9911  
8 Fax: (203) 801-5222

9 Attorneys for Plaintiff  
10 WHITNEY R. LEEMAN, PH.D.

11  
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13  
14 IN AND FOR THE COUNTY OF SAN FRANCISCO  
15  
16 UNLIMITED CIVIL JURSDICTION

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

No. CGC-03-418025

18 Plaintiff, )

**[PROPOSED] JUDGMENT  
PURSUANT TO TERMS OF  
STIPULATION AND ORDER RE:  
CONSENT JUDGMENT**

19 v. )

20 ARC INTERNATIONAL NORTH AMERICA )  
21 INC., SEARS ROEBUCK AND CO.; and )  
DOES 1 through 150, )

Date: June 3, 2005

Time: 9:00 a.m.

22 Defendants. )

Dept: 501

Judge: Hon. James J. McBride

ENDORSED  
FILED  
San Francisco County Superior Court  
JUN 3 2005  
GORDON PARK-LI, Clerk  
BY: GARTH SAYERS  
Deputy Clerk



1 In the above-entitled action, Plaintiff Whitney R. Leeman, Ph.D. and Defendant Sears  
2 Roebuck and Co., having agreed through their respective counsel that judgment be entered  
3 pursuant to the terms of the Stipulation and [Proposed] Order Re: Consent Judgment entered into  
4 by the parties, and after issuing a Stipulation and Order Re: Consent Judgment approving  
5 Proposition 65 settlement agreement on June 3, 2005,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Code of Civil  
7 Procedure section 664.5, judgment is entered in accordance with the terms of the Order Approving  
8 Proposition 65 Settlement Agreement and Consent Judgment, between the parties.

9 IT IS SO ORDERED.

10 Dated: ~~JUN 3 2005~~

JAMES J. McBRIDE  
Hon. James J. McBride  
JUDGE OF THE SUPERIOR COURT