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4	Assistant Attorney General CRAIG C. THOMPSON	Jan 15 1993		
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19	COUNTY OF SAN FRANCISCO			
20				
21	PEOPLE OF THE STATE OF CALIFORNIA ex.)	No. 938430		
22	rel. DANIEL E. LUNGREN, Attorney) General of the State of California,)	CONSENT JUDGMENT AS TO		
23	Plaintiffs,	DEFENDANTS WEDGWOOD USA, INC.; FITZ &		
)	PLOYD, INC.; ROYAL		
24	V.)	DOULTON USA, INC.; NORITAKE COMPANY, INC.;		
25	JOSIAH WEDGWOOD & SONS, INC.; et al.,)	VILLEROY & BOCH TABLEWARE, LTD.;		
26	Defendants.	MIKASA; AMERICAN COMMERCIAL, INC.; THE		
27		PFALTZGRAFF COMPANY;		
		PICKARD, INC.		

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1. <u>Introduction</u>

- 1.1. On November 12, 1991, the People of the State of California, ex rel. Daniel E. Lungren, ("People") filed a complaint for Civil Penalties and Injunctive Relief ("Complaint") in San Francisco County Superior Court. Wedgwood USA, Inc., 'Fitz & Floyd, Inc., Royal Doulton USA, Inc., Noritake Company, Inc., Villeroy & Boch Tableware, Ltd., Mikasa, American Commercial Inc., Pickard, Inc., and The Pfaltzgraff Company ("Defendants") are Defendants named in the Complaint.
- 1.2. Defendants are corporations that employ more than ten persons and offer ceramic dishes such as plates, bowls, and cups intended for the service or storage of food ("tableware") for sale within the State of California.
- 1.3. People's Complaint alleges that Defendants have sold tableware containing lead as a constituent of glazes and other materials used in the manufacture of the tableware, that this lead leaches into foods stored or served in them, and that the resulting exposures violated provisions of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety Code sections 25249.5 et seq. ("Proposition 65"), and Business and Professions Code sections 17200 et seq. ("Unfair Competition Act"), by knowingly and intentionally exposing persons to a chemical known to the State of California to cause reproductive toxicity, without first providing a clear and reasonable warning to such individuals.
- 1.4. On November 12, 1991, the Environmental Defense Fund and Lloyd G. Connelly ("EDF"), filed a complaint against the same

group of Defendants as named in the People's Complaint, with similar material allegations of fact, but alleging a cause of action only under Business and Professions Code section 17200, the Unfair Competition Act. As stated below and evidenced by the signature of EDF, this Consent Judgment will resolve the claims raised in EDF's complaint.

- 1.5. For purposes of this Consent Judgment only, the parties stipulate that this Court has jurisdiction over the allegations of violations contained in the Complaint and personal jurisdiction over Defendants as to the acts alleged in the Complaint, that venue is proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a resolution of the allegations contained in the Complaint.
- 1.6. The parties enter into this Consent Judgment pursuant to a full settlement of disputed claims between the parties as alleged in the Complaint for the purpose of avoiding prolonged litigation. By execution of this Consent Judgment, Defendants do not admit any violations of Proposition 65 or the Unfair Competition Act and specifically deny that they have committed any such violation or that the present warning program is legally insufficient. Nothing in this Consent Judgment shall be construed as an admission by any Defendant of any fact, issue of law or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by any Defendant of any fact, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair

- 2. Injunctive Relief: Clear and Reasonable Warnings.
- 2.1. Clear and reasonable warning that use of certain tableware exposes persons to a chemical known to the State of California to cause birth defects or other reproductive harm shall be provided under the circumstances and in the manner provided in this Consent Judgment. As of June 1, 1993 and continuing thereafter, said clear and reasonable warnings for all tableware for which warnings are required by this Consent Judgment ("Covered Tableware") shall be provided through the use of the Designated Symbol and Identifying Signs, as described below.
 - A. Identifying Signs and Designated Symbol
- 1. Identifying Signs. Each Identifying Sign shall be 85" by 11" in size and shall have the exact content, form, color and print style as Exhibit A.
- 2. Designated Symbol. The Designated Symbol shall appear exactly as shown in Exhibit B (3/4" high) and may appear on adhesive stickers, capable of adhering to an item of tableware, a placard, and a shelf. Except as otherwise provided in this Consent Judgment, any reproduction of the Designated Symbol must be in the same size and color as shown in Exhibit B. The Attorney General shall not agree to any settlement requiring the use of the Designated Symbol in giving a Proposition 65 warning

for exposures other than a consumer product exposure as defined under 22 CCR section 12601(b).

B. Covered Tableware Displayed in Retail Stores

- 1. Identifying Signs shall be placed in each California retail establishment in which any of Defendants' Covered Tableware is sold. Where a retail establishment sells only tableware that does not require a warning, it is not required to post the Identifying Sign. Identifying Signs shall not be covered or obscured, and shall be placed and displayed in a manner rendering them likely to be read and understood by an ordinary individual under customary conditions of purchase.

 Specifically, such signs shall be placed as follows:
- a. Department Stores or other stores with separate check-out for tableware department: for a store selling tableware in a physically separate department or section, which contains cash registers within such department or section that are used primarily to purchase items sold in that department or section, signs shall be placed at each cash register in that section or department, and at a minimum of two additional locations where Covered Tableware is displayed within the section or department;
- b. Large stores without a separate check-out for tableware department: any store that sells tableware and has more than 7,500 square feet of floor space and that uses one or more check-out stands for all merchandise purchased at the store, a single sign shall be posted at each location where Covered Tableware are displayed, plus as many additional signs as are

necessary to assure that any potential purchaser of tableware would be reasonably likely to see an Identifying Sign.

- c. Small stores without a separate check-out for tableware department: any store that sells tableware and has less than 7,500 square feet of total floor space, and uses one or more check-out stands for all merchandise purchased at the store, shall post signs in the manner provided in (a) or (b) above.
- 2. The Designated Symbol shall be displayed in conjunction with the Covered Tableware, in any one or more of the following locations:
- a. Affixed to every placard, "tent sign," shelf talker, or shelf sticker adjacent to the displayed article that identifies the brand name and pattern of the article displayed; or
- b. Affixed to the displayed article of Covered

 Tableware on a part of the article where the symbol will be seen
 as the article is displayed; or
- c. Affixed to the back of the displayed article of Covered Tableware, but only if the back of the article contains a sticker identifying the price or a sticker identifying the item or items available in the tableware pattern and listing their prices.
 - C. Covered Tableware for Sale in Retail Stores, But Not Displayed

Where Covered Tableware is available for sale in a retail store, but no article of the same pattern is displayed in the retail store, and instead is pictured in a catalog, brochure or other graphic depiction available within the retail store, the warning shall be provided as follows:

- 1. Where the brochure or catalog contains the price, the following warning message shall be stated within the brochure or catalog, on the inside front cover, on the same page as any order form, or on the same page as the price, in at least 12 point type, with the Designated Symbol at least 3/4 inch: "Prop 65 WARNING: Certain patterns of tableware for sale through this catalog will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. Patterns identified with this symbol: [Designated Symbol] are the ones for which this warning is given." The Designated Symbol also shall be provided in conjunction with any picture or depiction of Covered Tableware, immediately following any text stating the name of the pattern in the same size as the name of the pattern.
- 2. Where such Covered Tableware is depicted in a brochure or catalog, but said brochure does not contain the price of the article, the warning message and Designated Symbol shall be provided on any price lists intended for display to the consumer. The warning message specified in Paragraph 2.1.C.1 shall be stated within the price list, either on the inside front cover or on the same page as the price, in at least 12 point type, with the Designated Symbol at least 3/4 inch. The Designated Symbol shall also be provided on the page where both the price and pattern name are provided, adjacent to the name of the pattern for which a warning is given, in the same size as the name of the

pattern. The Designated Symbol may be printed in the same colors as used in the price list.

D. Mail Order Tableware

Where Covered Tableware is available for sale by mail order to residents of the State of California, clear and reasonable warning shall be provided by including a warning, either in the mail order catalog or brochure or with the Covered Product when it is shipped to California customers, as follows:

- 1. Mail Order Catalog or Brochure. The following warning message shall be stated within the catalog or brochure, on the inside front cover, on the same page as any order form, or on the same page as the price, in at least 12 point type with the Designated Symbol at least 3/4 inch: "Prop 65 WARNING: Use of certain ceramic tableware for sale in this catalog or brochure will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. Patterns identified in this catalog or brochure with this symbol: [Designated Symbol] are the ones for which this warning is given. The Designated Symbol shall also be provided on the page where both the price and pattern name are provided, adjacent to the name of the pattern for which a warning is given, in the same size as the name of the pattern.
- 2. Package Insert or Label. Alternatively, a warning may be provided with the Covered Tableware when it is shipped, by (a) inserting a card or slip of paper measuring at least 4" by 6" in the shipping carton, (b) affixing a pressure-sensitive label measuring at least standard business-card size on the face of the

shipping carton, or (c) printing the warning on the packing slip or customer invoice identifying the Covered Tableware in lettering of the same size as the description of the Covered Tableware. The warning shall read as follows: "Prop 65 WARNING: Use of this product will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. You may return this product for a full refund within 30 days of receipt, if you wish. You also may obtain a list of each pattern of ceramic tableware sold by this company for which the same warning is given." Upon request of the person receiving that warning, the mail order house shall provide a list of each pattern of tableware sold by that mail-order house for which a warning is required.

- E. Restaurants and Other Food Service Establishments
 Restaurants, hotels, and other food service establishments
 shall provide clear and reasonable warning, whenever Covered
 Tableware is used for service of food consumed by their
 customers, by posting an 8½" by 11" sign with the exact content,
 form, color and print style as Exhibit C. The sign shall be
 printed on at least 65-pound cover stock.
- 2.2. No later than April 30, 1993, Defendants shall mail warning materials as described below:
 - A. Warning Materials for Retail Stores.

Defendants shall mail to the central purchasing office for all distributors and retail stores with whom they transact business for sale of Covered Tableware in California the following materials:

- 1. At least five Identifying Signs, printed on 65-pound cover stock.
- 2. At least 100 Designated Symbols, which shall be provided on adhesive peel-off sheets.

- 3. A letter explaining the warning program, providing posting instructions, and providing instructions for warnings for products not displayed. This letter shall contain the text shown in Exhibit D, and shall contain no further information or statements without advance written approval of the Attorney General.
- 4. A document identifying all Covered Tableware, by pattern, determined pursuant to the testing program established under Section 4, as follows:
- a. Said document need not accompany any shipment of the Covered Tableware, and may be sent as a single document on behalf of a group of Defendants, or individually only to those distributors or retail stores selling the Covered Tableware of an individual Defendant.
- b. Documents updating or supplementing the list of Covered Tableware shall be provided to the central purchasing office for all distributors or retailers as frequently as necessary to advise retailers of any additional Covered Tableware or of any tableware pattern no longer requiring warnings. Where tableware that had required a warning is determined to no longer require a warning, Defendants shall not send any notice advising the central purchasing office for all distributors or retail stores that the tableware no longer requires a warning until 180

days after the last articles in that pattern that required a warning were shipped from the factory for potential sale in California. Where there is no change in the list of Covered Tableware, Defendants shall advise the central purchasing office for all distributors and retail stores with whom they transact business for sale of Covered Tableware in California at least once each calendar year that the list remains accurate. Once a Defendant has advised a retailer or distributor that no warnings are necessary on any of its tableware Patterns, then no further notices need be sent to such retailer or distributor unless warnings are subsequently required on any of Defendant's Patterns.

5. Beginning with the first regularly scheduled printing of the brochure, catalog or price list referred to in Paragraph 2.1.C after April 30, 1993, and continuing with each regularly scheduled brochure, catalog or price list, Defendants shall provide warnings as specified in either (a) the brochure or catalog or (b) the price list. Such brochure, catalog or price list shall, however, be distributed no later than September 30, 1993. Any supplement to the price list which includes a pattern requiring a warning shall provide the Designated Symbol adjacent to the name of the pattern as provided in Paragraph 2.1.C.2.

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B. Warning Materials for Mail Order Houses.

Each defendant shall mail to the central purchasing office for each company which they know or have reason to know sells that Defendant's Covered Tableware to residents of California by mail:

- 1. A letter explaining the warning program. This letter shall contain the text shown in Exhibit E, and shall contain no further information or statements without advance written approval of the Attorney General.
- 2. The same materials as those provided under Paragraph 2.2.A.4.
 - C. Warning Materials for Restaurants.

Defendants shall mail to the central purchasing office for each restaurant and other food service establishment with whom they transact business for commercial use of Covered Tableware in California:

- 1. Two copies of the warning sign set forth in Exhibit C.
- 2. Letter(s) explaining the warning program and providing posting instructions to the restaurant, and where necessary, the restaurant supplier. This letter shall contain the text shown in Exhibit F, and shall contain no further information or statements without advance written approval of the Attorney General.
- 3. A letter listing those pattern(s) of Covered Tableware sold to the individual restaurant or other food service establishment.

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- D. Documents to Attorney General
- 1. An example of documents mailed no later than April 30, 1993, plus a certificate stating that such materials have been properly mailed, shall be mailed to the Attorney General and EDF within 21 days after mailing by Defendants.
- 2. An example of documents mailed after April 30, 1993 shall be maintained by Defendants for two years after mailing, and shall be made available to the Attorney General upon request.
- 3. Where the Attorney General obtains documents pursuant to this section, he shall make them available to EDF upon request.
- 2.3. Any Defendant that has complied with the terms of Paragraph 2.2 of this Consent Judgment shall not be found to have violated this Consent Judgment where a restaurant, retail store, distributor, or any other person required to provide warnings, fails to provide the warning required by Paragraph 2.1.
- 2.4. The fact that this Consent Judgment authorizes use of the term "Prop 65" in conjunction with the word "WARNING" in signs and notices prescribed in this Consent Judgment shall not be construed as an assertion or concession by any party that use of such term is either required under Proposition 65 or would meet Proposition 65's definition of "clear and reasonable warning" in any other context.
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3. Injunctive Relief: Warning Standards

3.1. Warnings shall be provided based on the result of the method of analysis for lead set forth in "Official Methods of Analysis of the Association of Official Analytical Chemists," 15th Edition (1990), Method 973.32, "Cadmium and Lead in Earthenware: Atomic Absorption Spectrophotometric Method, Final Action (1977), AOAC/ASTM Method" ("Lead Leaching Test"). Warnings shall be provided for all articles in any pattern for which the results of the Lead Leaching Test exceeds either of the levels set forth in A and B below. A "Pattern" consists of any group of Food Contact tableware articles, typically sold and marketed under one name, which is composed of pieces of the same general design and appearance, such that they are intended to be purchased and used together, in place settings or in table settings. Food Contact tableware articles are all tableware articles except any of the following: (1) those that are either permanently marked "Not for Food Use--article may poison food-for decorative purposes only" (or such other language as may be required by FDA compliance guidelines or regulations); (2) those for which reasonably foreseeable uses would not include the serving or storing of food or beverages (e.g., candlesticks or napkin rings); (3) salt shakers and pepper shakers or mills. For purposes of the Consent Judgment, flatware and hollowware are as defined in U.S. Food and Drug Administration Compliance Policy Guide 7117.07.

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- B. Hollowware Warning Standard. Any Pattern for which the Lead Leaching Test result for the "worst case" article of hollowware as defined in Paragraph 4.3.A. shipped for sale in California, exceeds 0.100 parts per million, as determined pursuant to Section 4 of this Consent Judgment.
- C. No Additional Warnings. Warnings shall not be provided for articles of tableware due to lead exposure to consumers unless required or specifically authorized by this Consent Judgment.
- D. Detectable Amount. For purposes of this Consent

 Judgment, the "Detectable Amount" of lead determined pursuant to

 Title 22 California Code of Regulations section 12901 is 0.100

 parts per million, using the Lead Leaching Test.
 - 3.2. Changes to Certain Standards.
- A. For purposes of this Consent Judgment, the warning standards, the Lead Leaching Test, and the Detectable Amount set forth in Paragraph 3.1 shall not be changed for a period of at least five years from entry of this Consent Judgment, unless a different standard or test method is mandated by changes in Proposition 65 or its implementing regulations.
- B. After five years from entry of this Consent Judgment, if the application of the existing statute and implementing

regulations to the testing and use of tableware results in a change in the warning standards, the Lead Leaching Test or the Detectable Amount, then the warning standards, the Lead Leaching Test, or the Detectable Amount for purposes of this Consent Judgment may be changed, even if not mandated by changes in Proposition 65 or its implementing regulations. Where the People believe such a change has occurred, they shall notify Defendants and provide a 90-day period during which Defendants may comment on the proposed change. If, after expiration of the comment period and consideration of any comments received, the People still believe that a change has occurred, they shall notify Defendants of the change. The change shall take effect 120 days after the notice of the change is mailed, and shall not apply to any tableware manufactured before the date the change takes effect.

C. Any change in the warning standard, the Lead Leaching
Test, or the Detectable Amount mandated by changes in
Proposition 65 or its implementing regulations shall take effect
as provided by law.

4. Injunctive Relief; Testing Program

4.1. Defendants shall engage in the following program of testing of tableware ("Testing Program"), to determine whether warnings are required. Where a Defendant has complied with all provisions of the Testing Program, and the test results establish that under Paragraph 3.1 the Patterns do not require a warning, then no warning shall be given for those Patterns, notwithstanding any contrary test result obtained by any person

- 4.2. As part of the Testing Program, each Defendant shall maintain the following records, or require by contract that any laboratory conducting testing shall maintain the following records and will provide them to Defendants upon request:
- A. Records kept in the normal course of business showing the maintenance and calibration of equipment used to conduct the Testing Program;
- B. Individual test results of all tests conducted as part of the Testing Program;

 Provided that Defendants shall not be required to maintain the above records for any test for more than two years after that test was conducted.
- 4.3. The Testing Program shall consist of conducting the Lead Leaching Test defined in Paragraph 3.1, using equipment and methods which establish a detection limit of 0.100 parts per million or lower for each article tested. At least annually beginning January 1, 1993, unless otherwise provided, each Defendant shall test each of its Patterns currently being manufactured which may be sold in California in accordance with the following procedures:
- A. Defendants shall test, at a minimum, the "worst case" article of flatware and "worst case" article of hollowware in each Pattern. The "worst case" article in any Pattern is the article that is shipped for sale in California at the time of testing that generates the highest lead concentration result on

the Lead Leaching Test. Where a change in an article lowers the result of the Lead Leaching Test such that it no longer is the highest result among all articles in the Pattern, then it is no longer the worst case article, and the new "worst case" article must be used for testing. If the Attorney General believes that a Defendant has incorrectly selected the "worst case" article in any pattern, as evidenced by a Lead Leaching Test result on any article that exceeds the Defendant's Lead Leaching Test result for the "worst case" article it has selected, then that Defendant shall submit the basis for its determination of the "worst case" article, including any test results, and shall test the article for which the Attorney General has obtained a higher test result. Testing of every stock keeping unit ("SKU") shall be an approved method of identifying the "worst case" article.

- B. If, prior to executing the Consent Judgment, a Defendant has conducted tests on articles of flatware and hollowware other than the "worst case" article and the mean of the Lead Leaching Test Results of these articles exceeds the warning level, then the results of these tests may be used to determine whether a warning is required, provided that all of the other requirements of Paragraph 4.3 have been satisfied.
- C. Undecorated Patterns, underglaze decorated Patterns and items with undecorated food surfaces may be grouped into one Pattern for purposes of the "worst case" test if they use the same glaze and are subject to the same kiln firing process. Prior to grouping any patterns together under this paragraph, a manufacturer shall perform a one-time test satisfying the

- D. All test articles shall be randomly selected using any generally accepted random sampling method such as International Standards Organization 2859-1 (1989), or any random method described in <u>Ouality Control Handbook</u>, J.M. Juran, Ed. (3d Edition, 1962), Chapter 24.
- E. The number of articles tested shall be sufficient to establish that, after accounting for the deviation among the results of the sampled articles, there is a 95% statistical confidence that the mean Lead Leaching Test result of the actual population from which the sample is drawn is no greater than the level for which a warning is required. This number is shown on Exhibit G (for flatware) and on Exhibit H (for hollowware). Notwithstanding the foregoing, where less than 2,000 articles per year of the Pattern are shipped for potential sale in California, six articles may be tested.
- F. Alternatively, where at least 12 articles in a Pattern are tested, and the mean of the Lead Leaching Test result of the 12 articles exceeds the warning level, no further testing is required if a warning is given.
- G. Where at least 12 articles are tested, and the mean of the Lead Leaching Test result of the sampled articles is less than the level requiring a warning, but establishment of the 95% confidence level would require the testing of more than 108 articles (based on Exhibits G and H), no further testing is required if a warning is given.

H. If a Pattern is manufactured using glazes and decorating materials to which no lead has been intentionally added, no further testing and warnings shall be required for that Pattern, except that the manufacturer shall perform a one-time test satisfying the provisions of Paragraph 4.3 to confirm that no warning is required. Patterns may be grouped together and considered as one Pattern for purposes of this provision as provided in Paragraph 4.3.C.

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- The lot, batch, or other group from which any articles I. to be tested are drawn must be representative of the entire population of articles of the Pattern in question manufactured in the calendar year or since the date of the last test. In order to accomplish this, a manufacturer must insure that its manufacturing process for a particular Pattern in the Testing Program did not change during the calendar year or since the last test. A manufacturing process change will be deemed to have occurred if there is a material change in: the glaze, print, decorating materials (or in the supplier of those materials), type of fuel used to fire the kiln, manufacturing site or kiln firing schedules, temperatures, cycles, settings and procedures, or any other factor that substantially affects Lead Leaching Test results on manufactured articles. If there is such a change, the manufacturer shall retest the product in accordance with the Testing Program to determine whether warnings are required.
- 4.4. Any records required to be maintained by Paragraph
 4.2 shall be made available to the Attorney General for
 inspection within the State of California upon 60 days written

notice in accordance with Section 17. Such records shall not be made available to the public unless required by the California Public Records Act or other laws, except as part of presenting such records to a court as part of any proceeding, and except that the Attorney General shall make such records available to EDF on request, which shall maintain their confidentiality to the same extent as would be required if the records remained solely in the possession of the Attorney General. If a request for such records under the California Public Records Act or other law is made, the Attorney General shall respond to the request in the manner he determines is required by law. The Attorney General shall immediately notify Defendants of the receipt of any such request, and shall provide written notice 10 days prior to releasing any records pursuant to such a request.

5. Penalties

5.1. On January 15, 1993, or 21 days after entry of this Consent Judgment, whichever is later, Defendants or an entity acting on their behalf shall pay a civil penalty pursuant to Health and Safety Code section 25249.7(b) of \$500,000. Payment shall be made by delivery of certified funds payable to the Attorney General of the State of California to 2101 Webster Street, 12th Floor, Oakland, California, 94612-3049 (Attn: Edward G. Weil, Deputy Attorney General).

6. <u>Litigation Costs</u>

6.1. On January 15, 1993, or 21 days after entry of this Consent Judgment, whichever is later, Defendants or an entity acting on their behalf shall pay \$25,000 to the Attorney General

as reimbursement for the costs of investigating and prosecuting this action. Payment shall be made by delivery of certified funds payable to the Attorney General of the State of California to 2101 Webster Street, 12th Floor, Oakland, California, 94612-3049 (Attn: Edward G. Weil, Deputy Attorney General).

7. Tableware Education and Enforcement Fund

- 7.1. On January 15, 1993, or 21 days after entry of this Consent Judgment, whichever is later, Defendants, or an entity acting on their behalf, shall pay \$900,000 to the California Public Health Foundation, a tax-exempt charitable organization under section 501(c)(3) of the Internal Revenue Code, to be used by agreement with the Attorney General for the purposes set forth in this Consent Judgment. Payment shall be made by delivery of certified funds payable to the California Public Health Foundation to 2001 Addison Street, Suite 210, Berkeley, California, (Attn: James Simpson, General Counsel).
- 7.2. Of the funds paid by Defendants pursuant to paragraph 7.1, \$500,000 shall be deemed refundable, and shall be maintained by the California Public Health Foundation in an account separate from the other funds, in order to assure that it is available to pay any refunds required by this paragraph. In any instance in which either the Attorney General or EDF obtains any recovery of money from any other person or entity, pursuant to a settlement of alleged violation of Proposition 65 or the Unfair Competition Act based on failure to provide clear, reasonable and lawful warning of exposure to lead from ceramic tableware, Defendants shall thereafter receive a refund of 25% of the amount of the

recovery from said other person or entity, up to a maximum refund This 25% shall be calculated based on the total of \$500,000. monies recovered from such person or entity, whether denominated as penalties, costs, attorney's fees, or contributions to this or any other fund. The Attorney General shall notify Defendants of any such settlements, by certified mail to the Coalition for Safe Ceramicware, at least every 60 days. Partial payments of any monies owed Defendants under this paragraph shall be made by the California Public Health Foundation 90 days after entry of this Consent Judgment, 180 days after entry of this Consent Judgment, and thereafter semi-annually or until the balance of the \$500,000 is paid. Such payments shall be made by delivery of certified funds payable to the Coalition for Safe Ceramicware, c/o Collier, Shannon, Rill & Scott, 3050 K Street, N.W., Washington, D.C., 20007 (Attention: David A. Hartquist), which shall have the responsibility of delivering such funds to the individual Defendants.

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- 7.3. The Tableware Education and Enforcement Fund shall be used for the following general purposes, subject to Paragraph 7.4:
- A. Distribution of Informational Pamphlets to the Public.

 A general informational pamphlet may be prepared and distributed that describes the problem, what to look for, and gives direction to consumers about how to minimize exposure to lead.
- B. Distribution of more specialized information for particular groups. Some groups need special information suited to their circumstances, and materials may be prepared for them

- C. Television/video. Materials covering topics similar to those addressed in the publications.
- D. Newspaper/media ads and public service announcements.

 Advertisements and/or public service announcements describing the problem more briefly, and advising how to obtain the available publications, or explaining the designated symbol warning system could be run in newspapers and on radio.
- E. Toll-free information services. A central toll-free telephone number could be contained in the brochures and given in ads. Additional information about lead problems and referrals to testing labs or other lead reduction programs may be provided.
- F. Workshops and training. Workshops may be provided for ceramic hobbyists, discussing use of unleaded glazes and proper firing practices with leaded glazes.
- G. Spanish and Asian language materials. Development and dissemination of Spanish, Chinese and Vietnamese language versions of these materials.
- H. Lead testing of tableware: Funds may be used to test tableware in households with cases of acute lead poisoning that are being investigated by the public agencies such as Department of Health Services' Childhood Lead Poisoning Prevention Program,

and for tableware use in schools or other institutions.

- I. Education on other sources of lead exposure: Education about other sources of lead exposure for the limited purpose of helping to assure that any informational materials do not create the misleading impression that tableware is responsible for the bulk of human lead exposure.
- J. Further enforcement: Some portion of the funding will be directed toward the Attorney General's costs of investigating and prosecuting violations of Proposition 65 and the Unfair Competition Act by other tableware companies.
- R. Compliance Inspections: A portion of the funding may be used to pay the cost of periodic inspections of stores throughout the state and other costs of assuring that Defendants comply with all terms of the judgment.
- 7.4. Specific allocation of funds toward the purposes identified in Paragraph 7.3, as well as the selection of persons or organizations to carry out those purposes, and the approval of materials to be published or distributed in furtherance of those purposes, shall be determined by agreement between the California Public Health Foundation and the Attorney General. This process shall include consultation with experts in public health and risk communication issues, including EDF, and a designee of the Coalition for Safe Ceramicware, except that EDF and the Coalition for Safe Ceramicware shall each pay their own expenses. The contract between the Attorney General and the California Public Health Foundation shall include a specific provision obligating the California Public Health Foundation to provide refunds as

provided under Paragraph 7.2, and the Coalition for Safe Ceramicware shall be included as an express third-party beneficiary of that provision of the contract.

8. <u>Injunctive Relief: Lead Reduction</u>

- 8.1. Each Defendant shall reduce lead levels in its tableware as provided in Paragraph 8.2, 8.3 and 8.4, or in the alternative, shall pay civil penalties to the Attorney General pursuant to Proposition 65 as provided in Paragraph 8.4 and 8.5. No Defendant shall have any obligation to pay penalties under this paragraph for violations by any other Defendant.
- 8.2. Each Defendant shall calculate and submit to the .

 Attorney General and EDF Baseline Lead Levels as follows, within 60 days after entry of this judgment:
- A. A "Baseline Flatware Lead Level," shall be established as follows:
 - (1) taking the mean Lead Leaching Test result reported under cover of Defendants' letters of January 27 and February 18 and 21, 1992, for the flatware in each Pattern that exceeds the warning standard set forth in Paragraph 3.1.A;
 - (2) multiplying the mean Lead Leaching Test result for the flatware in each Pattern by the number of articles of that Pattern estimated to have been sold in the State of California in 1991;
 - (3) multiplying the product obtained in (2) by a "usage factor," which shall be 5 for occasional use tableware, 150 for daily use tableware, and 500 for

- (4) adding the results obtained for each Pattern under (3) and dividing by the number of articles of flatware sold of all Patterns used in the calculation.
- B. The "Baseline Hollowware Lead Level" shall be established by using the same procedure used for the Baseline Flatware Lead Level, but using the mean Hollowware Lead Leaching Test result in each Pattern, and applying the warning standard for Hollowware set forth in Paragraph 3.1.B.
- 8.3. The "Current Flatware Lead Level" and "Current Hollowware Lead Level" shall be established in the same manner, and using the same Patterns, as the Baseline Flatware Lead Level and Baseline Hollowware Lead Level, except that:
- A. any new Pattern that has been shipped for sale in California that was not for sale on the date of calculation of the Baseline Level shall be included in the calculation of the Current Level;
- B. weighting by number of articles sold shall use sales estimates of tableware sold in California for the most recent calendar year; and
- C. mean Lead Leaching Test results for each Pattern shall be obtained using test procedures in accordance with Section 4, except that where a cup was used to calculate the Baseline Hollowware Lead Level, a manufacturer may opt to use a cup as the representative sample of hollowware, and that where a salad plate was used to calculate the Baseline Flatware Lead Level, a manufacturer may opt to use a salad plate as the representative

article of flatware, for purposes of Section 8 only.

8.4. "Target Lead Levels" are achieved whenever the Current Lead Level, calculated on the basis of the most recent data collected pursuant to Paragraph 8.3, on or prior to the dates specified below, is lower than the Baseline Lead Level by the percentage specified as follows:

·	Year 1 (2/28/94)	Year 3 (12/31/95)	Year 5 (12/31/97)
Flatware	15%	30%	50%
Hollowware	10%	15%	25%

- 8.5. Where any Defendant does not achieve any Target Lead Level (either for Flatware or Hollowware, in any specified year), that Defendant shall pay the following civil penalty under Proposition 65:
- A. For any company that sold over 100,000 articles of tableware in 1991 allegedly exceeding the warning standard, \$33,333 (Wedgwood USA, Inc.; Royal Doulton USA, Inc.; Noritake Company, Inc.; Villeroy & Boch, Ltd.; Mikasa);
- B. For any company that sold over 50,000 but less than 100,000 articles of tableware in 1991 allegedly exceeding the warning standard, \$16,666 (none of the Defendants signing this Consent Judgment fall within this category);
- C. For any company that sold less than 50,000 articles of tableware in 1991 allegedly exceeding the warning standard, \$8,333 (Fitz & Floyd, Inc.; Pickard, Inc.; The Pfaltzgraff Company).
- 8.6. Each Defendant shall submit its calculation of Current Lead Levels to the Attorney General within 120 days after the 1,

- A. The submission shall include the calculations themselves, the mean Lead Leaching Test results on which they are based, a description of how the sales estimates are derived, and shall be made under penalty of perjury.
- B. Within 60 days of receipt of a complete submission containing all information to determine whether the Target Lead Levels have been achieved, the Attorney General shall determine whether the Defendant has achieved the Target Lead Levels and shall mail notice of his determination to the Defendant, except as provided in C, below.
- C. Where the Attorney General determines that a submission is not complete or does not contain all information necessary to determine whether the Target Lead Levels have been achieved, he may direct the Defendant to provide further information within a specified period of no less than 30 days. Where the Attorney General requests such information, the 60-day period under B, above, shall not commence until the Attorney General has received the requested information. Failure to provide the requested information shall constitute a failure to achieve the Lead Reduction Targets.
- D. If the Attorney General determines that the Defendant has failed to achieve any Target Lead Levels, he shall so notify the Defendant. Within 60 days after said notice is sent, any such Defendant must either deliver to the Attorney General the entire amount of penalty required by Paragraph 8.5 for failure to achieve the Target Lead Level in question, or properly file a

notice of motion with the Superior Court seeking a determination that the Target Lead Level has been achieved.

- F. Documents collected by the Attorney General under this section shall be treated in the same manner as documents collected under Paragraph 4.4 for purposes of disclosure to EDF and to the public.
- G. The Attorney General shall notify the EDF of all determinations under Paragraph 8.6.B., C. and D. Where the Attorney General has determined that a Defendant achieved its Target Lead Levels, but EDF disagrees, EDF may properly file and notice a motion before the Superior Court seeking a determination that the Target Lead Level has not been achieved, within 60 days after the Defendant's complete submission is made available to EDF by the Attorney General.

9. Actions by Environmental Defense Fund

- 9.1. Immediately after entry of this Consent Judgment, EDF shall file with the court a Request for Dismissal, with prejudice, of Environmental Defense Fund and Lloyd G. Connelly v. Josiah Wedgwood & Sons, Inc., No. 938428, each party to bear its own costs.
- 9.2. Thirty days after EDF gives notice that the action has been dismissed with prejudice, together with a file stamped, conformed copy of the dismissal document, or on January 15, 1993, whichever is later, Defendants or an entity acting on their behalf shall pay to EDF the sum of \$575,000 payable to Rogers, Joseph, O'Donnell & Quinn as Trustee for the Environmental Defense Fund, Inc., and delivered to Joseph Sandoval, Jr.,

Rogers, Joseph, O'Donnell & Quinn, 311 California Street, Tenth Floor, San Francisco, CA, 94104, as compensation for attorney's fees and costs incurred in the prosecution and investigation of this matter and for further enforcement of Proposition 65 by EDF, for further educational materials by EDF, and to contribute to an existing Proposition 65 enforcement fund administered by the Tides Foundation.

10. Modification of Consent Judgment

10.1. This Consent Judgment may be modified upon written approval of the parties and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as provided by law and upon entry of a modified Consent Judgment by the Court.

11. Additional Enforcement Actions: Continuing Obligations

and EDF do not waive any right to take further enforcement actions on any violations not covered by the Consent Judgment, as specifically set forth in Section 15, and the Complaint. Except as specifically provided herein, nothing in this Consent Judgment shall be construed as diminishing each Defendant's continuing obligation to comply with Proposition 65 or the Unfair Competition Act in its future activities.

12. Enforcement of Consent Judgment

12.1. The People may, by motion or order to show cause before the Superior Court of San Francisco, enforce the terms and conditions contained in the Consent Judgment. In any action brought by People to enforce the Consent Judgment, People may

seek whatever fines, costs, penalties or remedies are provided by law for failure to comply with the Consent Judgment; and where said violations of this Consent Judgment constitute subsequent violations of Proposition 65 or other laws independent of the Consent Judgment and/or those alleged in the Complaint, People and EDF are not limited to enforcement of the Consent Judgment, but may seek in another action whatever fines, costs, penalties or remedies are provided for by law for failure to comply with Proposition 65 or other laws.

- 12.2. Notwithstanding the provisions of Paragraph 12.1, the People may seek fines, costs and penalties for the violations identified in subparagraph G below through the following alternative procedure:
- A. The proceeding shall be brought by noticed motion with at least 21 days notice in accordance with the Rules of the Superior Court;
 - B. No oral testimony or discovery shall be permitted;
- C. Documents submitted by the People and Defendants shall set forth admissible evidence;
- D. Any violation shall be proven by a preponderance of the evidence;
- E. Service of papers on the person identified in Paragraph
 17.2 shall be sufficient service on the party against whom relief is sought;
- F. Any records, data, test results, or other documents obtained from Defendants may be relied upon by the People and considered by the Court to resolve a claimed violation without

- G. Where the Court finds a violation it shall order the Defendant to pay a liquidated penalty as follows:
- (1) Where Covered Tableware is sold by a retailer without the warnings required in Paragraph 2.1 and the Defendant has failed to provide warning materials to the retailer for such Covered Product(s) as required by Paragraph 2.2, \$100 per retailer per day;
- (2) Where records sufficient to establish that a Pattern was properly tested under Paragraph 4.3 which were required to be retained under Paragraph 4.2 are not available, \$250 for each Pattern, provided, however, no such penalty shall be assessed for such a Pattern if a penalty for that Pattern has been assessed under Paragraph 12.2.G.3 below;
- (3) Where an article of tableware was required to be tested as a representative sample for a Pattern, and either was not tested or was not tested in accordance with Paragraph 4.3, \$500 for each Pattern not tested;

Provided, however, that the total penalty assessed against any Defendant under this procedure shall not exceed \$12,500 in any one calendar year.

12.3. EDF may enforce the terms of this Consent Judgment through the methods provided in 12.1 and 12.2 if it first gives the Attorney General a written notice specifying any violation that it alleges has occurred, with a copy to the Defendant, and the Attorney General has not commenced or is not diligently prosecuting a proceeding under either 12.1 or 12.2 within 60 days

after said notice was received by the Attorney General. If the Attorney General commences and diligently prosecutes a proceeding within 60 days from receipt of the notice, EDF shall have no right or ability to prosecute or intervene in that proceeding, or to commence a similar proceeding. This paragraph constitutes the exclusive basis by which EDF may enforce Parts 2, 3, and 4 of this Consent Judgment.

12.4. No Defendant shall have any obligation to pay Penalties under this Section for violations by any other Defendant.

13. Application of Consent Judgment

13.1. The Consent Judgment shall apply to and be binding upon the parties, their divisions, subdivisions, and subsidiaries, and the successors or assigns of any of them.

14. Authority to Stipulate to Consent Judgment

14.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into and execute the Consent Judgment on behalf of the party represented and legally to bind that party.

15. Claims Covered

15.1. This Consent Judgment is a final and binding resolution between the People, EDF and each defendant of any alleged violation of Proposition 65 and of Business and Professions Code Sections 17200 et seq., and any common law claim, arising from failure to provide clear, reasonable, and lawful warnings of exposure to lead that passes into food or

beverages served or stored in any Food Contact tableware articles manufactured, distributed or sold by any Defendant, whether committed by a Defendant or by any entity within its chain of distribution, including, but not limited to, retail sellers of that tableware. As between the People, EDF, and each Defendant, compliance with paragraphs 2.2, 3 and 4 herein resolves any issue, now and in the future, concerning compliance by each Defendant with the requirements of Proposition 65 and the Unfair Competition Act with respect to its tableware.

16. Retention of Jurisdiction

16.1. This Court shall retain jurisdiction of this matter to implement the Consent Judgment.

17. Provision of Notice

- 17.1. When any party is entitled to receive any notice under this Consent Judgment, the notice shall be sent to the person and address set forth in this paragraph. Any party may modify the person and address to whom notice is to be sent by sending each other party notice by certified mail, return receipt requested. Said change shall take effect for any notice mailed at least five days after the date the return receipt is signed by the party receiving the change.
- 17.2. Notices shall be sent to the following: For the Attorney General:

24 Edward G. Weil
Deputy Attorney General
25 2101 Webster Street, 12th Floor
Oakland, CA 94612

27 ///

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1
    For Wedgwood USA, Inc. and Pickard, Inc.:
 2
         David A. Hartquist
         Mark L. Austrian
 3
         Collier, Shannon, Rill & Scott
         3050 K Street, N.W.
 4
         Suite 400
         Washington, D.C.
                           20007
5
6
    For Fitz and Floyd, Inc.:
7
         Bobby Aldridge
         Fitz and Floyd, Inc.
 8
         2055-C Luna Road
         Carollton, TX 75006
9
10
    For Royal Doulton USA Inc.:
11
         President and C.E.O.
         Royal Doulton USA Inc.
12
         700 Cottontail Lane
         Somerset, NJ 08873
13
14
    For Villeroy & Boch Tableware, Ltd.:
15
         Richard Mattiaccio
         Francesca Scorsone
16
         Pavia & Harcourt
         600 Madison Avenue
17
         New York, NY 10022
18
    For Mikasa and American Commercial Inc.:
19
         Shigeru Watanabe
         Susan Peck
20
         Kelley, Drye, & Warren
         515 South Flower Street, Suite 1100
21
         Los Angeles, CA 90071
    For Pfaltzgraff Company:
23
         Craig W. Brenner, Esq.
         General Counsel
24
         The Pfaltzgraff Company
         140 East Market St.
25
         York, Pennsylvania 17401
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For Noritake Company, Inc.:
Michelle Tanaka Tanaka & O'Leary
655 15th Street, N.W.
Suite 800 Washington, DC 20005
For Environmental Defense Fund:
David Roe
Environmental Defense Fund 5655 College Avenue
Oakland, CA 94618
18. Court Approval
18.1. If this Consent Judgment is not approved by the
court, it shall be of no force or effect.
19. Execution in Counterparts
19.1. The stipulations to this Consent Judgment may be
executed in counterparts, which taken together shall be deemed to
constitute one document.
IT IS SO STIPULATED:
Dated: 12, 19973 DANIEL E. LUNGREN, Attorney
General of the State of California
RODERICK E. WALSTON Chief Assistant Attorney General
THEODORA BERGER Assistant Attorney General
CRAIG C. THOMPSON - EDWARD G. WEIL
CLIFFORD RECHTSCHAFFEN Deputy Attorneys General
C11111
By: EDWARD G. WEIL
Deputy Attorney General Attorneys for People
[SIGNATURES CONTINUED ON SUBSEQUENT PAGES]

27

1			
2	Dated:	, 1992	DAVID A. HARTQUIST MARK L. AUSTRIAN COLLIER, SHANNON, RILL & SCOTT
3			3050 K Street, N.W. Suite 400 Washington, DC 20007
			•
5			CHARLOTTE URAM RAYMOND F. LYNCH
7			LANDELS RIPLEY & DIAMOND 350 Steuart Street San Francisco, CA 94105-1250
8			Jan 11200100, Gii 31103 1230
		By:	
<u>S</u>)			Attorneys for
10			Wedgwood USA, Inc. Fitz and Floyd, Inc.
11.			Pickard, Inc.
12			Royal Doulton USA Inc.
13	Dated:	<u> /2/22</u> , 1992	RICHARD MATTIACCIO FRANCESCA SCORSONE
14			PAVIA & HARCOURT
15			600 Madison Avenue New York, NY 10022
16			BARRY P. GOODE MCCUTCHEON, DOYLE, BROWN & ENERSON
17			3 Embarcadero Center San Francisco, CA 94111
18		By:	Billians I'Masture
19		•	Attorneys for Villeroy & Boch
20			Tableware, Ltd.
21			
2:2	Dated:	, 1992	KELLEY, DRYE, & WARREN SHIGERU WATANABE SUSAN PECK
2.3			515 South Flower Street Suite 1100
24	1		Los Angeles, CA 90071
2:5		ву:	
25			Attorneys for Mikasa and
27			American Commercial Inc.
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2	Dated:	<u>13) 30</u> , 1992	DAVID A. HARTQUIST MARK L. AUSTRIAN COLLIER, SHANNON, RILL & SCOTT
3			3050 K Street, N.W. Suite 400
4			Washington, DC 20007
5			CHARLOTTE URAM RAYMOND F. LYNCH
6			LANDELS RIPLEY & DIAMOND
7			350 Steuart Street San Francisco, CA 94105-1250
8		By:	- wand Sholls
9		-	Attorneys for
10			Wedgwood USA, Inc.
11.			Fitz and Floyd, Inc. Pickard, Inc.
12			Royal Doulton USA Inc.
13	Dated:	1000	DIGUNDO MARRINGGIO
	Dated:	, 1992	RICHARD MATTIACCIO FRANCESCA SCORSONE
14			PAVIA & HARCOURT 600 Madison Avenue
15			New York, NY 10022
16			BARRY P. GOODE
17			McCutcheon, Doyle, Brown & ENERSON 3 Embarcadero Center
18			San Francisco, CA 94111
19		By:	
20			Attorneys for Villeroy & Boch Tableware, Ltd.
21			·
	Dated:	·¥[37] , 1992	KELLEY, DRYE, & WARREN
22			SHIGERU WATANABE SUSAN PECK
2.3			515 South Flower Street Suite 1100
24			Los Angeles, CA 90071
25		ву:	SHIGERU WATANABE
26			Attorneys for Mikasa and
27			American Commercial Inc.
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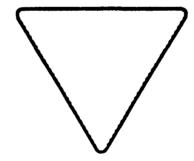
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2	Dated:, 199	
3		ANDREA S. ORDIN 444 South Flower Street
4		19th Floor Los Angeles, CA 90071
5		By: Audrea Olden
6		Attorneys for Pfaltzgraff
7		Company
8	Dated:, 199	TANAKA, & O'LEARY MICHELLE TANAKA 655 15th Street, N.W.
- [Suite 800
10		Washington, DC 20005
11.		By:
12		
13		Attorneys for Noritake Company, Inc.
14	. /. /.	
15	Dated://5/91, 129	ENVIRONMENTAL DEFENSE FUND
16		By:
17		David Roe Attorneys for Environmental Defense
18		Fund and Lloyd G. Connelly Plaintiffs in #938428
19		
20		Emission Official
21	IT IS SO ORDERED.	EDWARD STERN PRESIDING JUDGE
2:2	115/93	LHEQINING Jange
İ		JUDGE OF THE SUPERIOR COURT
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2	Dated:		1992	PEPPER, HAMILTON & SCHEETZ ANDREA S. ORDIN
3				444 South Flower Street 19th Floor
4				Los Angeles, CA 90071
5			By:	
6				Attorneys for Pfaltzgraff Company
7		7)		
8	Dated:	Dech 22.	1992	TANAKA, & O'LEARY MICHELLE TANAKA
9				655 15th Street, N.W. Suite 800
10				Washington, DC 20005
11			By:	Middle ancho
12				Attorneys for Noritake Company, Inc.
4				
.5	Dated:		1992	ENVIRONMENTAL DEFENSE FUND
16			By:	·
17				David Roe Attorneys for Environmental Defense
18				Fund and Lloyd G. Connelly Plaintiffs in #938428
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21	IT_IS S	O ORDERED.		
22			r	1
23			3	JUDGE OF THE SUPERIOR COURT
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	ii.			

PROP65 WARNING

Use of certain tableware for sale in this store will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm.

Patterns identified with this symbol:



displayed on or next to the product, are the ones for which this warning is given.



EXHIBIT B: DESIGNATED SYMBOL

PROP65 MARNING

The particular pattern of dishes used here will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm.

EXHIBIT D--RETAILER INSTRUCTIONS

(On letterhead with name, return address and telephone of sender)

Re: Court-ordered Warnings for Ceramic Tableware

Dear Retailer:

This letter conveys important materials concerning the need to provide court-ordered warnings for certain ceramic tableware products that contain lead. It is very important that you read and follow the instructions enclosed with this letter.

In January, 1992, we notified you that the State of California had initiated legal action under California's "Proposition 65," alleging that the use of certain ceramic tableware products exposes consumers to lead, a chemical known to the State to cause birth defects or other reproductive harm. We disputed these claims and believe that our products are safe. Nonetheless, we noted that settlement discussions were underway and asked you, as an interim matter, to post in-store signs providing Proposition 65 warnings for designated brands of ceramic tableware, manufactured by members of the Coalition for Safe Ceramicware ("CSC" or "Coalition").

The State of California and the Environmental Defense Fund (a co-plaintiff), have now reached a settlement with the defendants, all of whom are members of the CSC. Under the settlement agreement, the manufacturers to do not admit any violation of Proposition 65, but agree to continue to provide warnings under the statute. The agreement requires a warning program that uses a combination of in-store "identifying signs" and a "designated symbol" to identify the specific tableware patterns to which the Proposition 65 warning applies. (NOTE: This program is required <u>instead of</u> in-store signs that refer only to general brand names.)

EXHIBIT D: Page 1 of 5

Enclosed are four very important items:

- A list of certain brands and patterns of ceramic tableware that contain lead, and for which a warning under Proposition 65 is to be provided.
- Signs for posting in your store IF you currently sell any ceramic tableware for which a warning is required.
- 3. Adhesive stickers containing a warning symbol. These are to be posted on or near displayed items of tableware for which a warning is required.
- 4. A set of instructions for properly posting the warning materials.

If you do not post these signs and use these stickers as required, you risk further legal action by the Attorney General or others, in which monetary penalties could be sought.

Products for which warnings are required may be sold legally because they comply with U.S. FDA Standards for lead release. They require a warning because they exceed the stricter lead exposure standards of Proposition 65.

Not all suppliers are participating in this court-ordered warning program. Suppliers that are not participating in this program may be providing ceramic tableware that requires Proposition 65 warnings. You should contact your suppliers to determine if they are in compliance with Proposition 65, since failure to comply could subject you to the legal actions referred to above.

If you need additional signs or stickers, they are available FREE OF CHARGE by calling this toll-free number: 1-800-xxx-xxxx

Sincerely,
Name and title

EXHIBIT D: Page 2 of 5

Retail Store Warning Instructions for Ceramic Tableware

Here's what you need to do to comply with the court-ordered warning program:

- 1. Check the list, and see if any of the ceramic tableware sold in your store is listed as requiring a warning. If your tableware is on the list, or if your supplier of another brand of ceramic tableware informs you that its products require a warning, then you must post the enclosed signs. If your tableware is not on the list, and none of your suppliers inform you that its products require a warning, then you do not need to post the signs.
- 2. Post the signs. If any of the tableware sold in your store requires a warning, then you must post these signs. Where you must post them depends on the type of store you operate. There are three types:
 - a. Department stores with a separate check-out for the tableware department. If you sell tableware in a physically separate section with its own cash registers primarily used for that department, you must post the signs at each cash register in the tableware department and at two other conspicuous places in the tableware department.
 - b. Large stores without separate check-out for tableware.

 If you have more than 7,500 square feet of floor space, post a sign conspicuously at each place where ceramic tableware is displayed, plus any additional signs needed to assure that any potential purchaser of tableware is likely to see one of the signs.

EXHIBIT D: Page 3 of 5

- c. <u>Small stores with no separate check out for tableware</u>.

 If you have less than 7,500 square feet of floor space, you may choose either (a) or (b). You do not need to do both.
- 3. Use the warning symbol:

The warning signs by themselves don't tell the consumer which products require a warning. Posting the enclosed warning symbol on or near the product is essential, since many other tableware products do not require a warning. For every pattern that you display, you need to put the sticker in any one (not all), of the following places:

- On the back of one displayed article in each pattern, if the article has the price, or has the price or a list of articles available in that pattern on the back; or
- On one item on display in each pattern that requires a warning, where it can be seen when the item is displayed; or
- 3. On a tent card, placard, tent sign, or other sign that has the name of the pattern and is adjacent to the displayed item.

These symbols must be posted as required. They are required by the court order to be posted no later than June 1, 1993. Using the signs by themselves, or giving a list of patterns that require a warning to customers who ask for it, does not comply with the court order.

Over time, different suppliers will provide new information about which products require a warning, and which do not. Some suppliers will remove lead from products so that they no longer require a warning. As you receive updated information from suppliers, you should delete the warning symbol or add any new stickers that are needed. You will not need to change your signs. This is intended to be less burdensome than requiring complete changes in all signs each time a single pattern changes.

Remember, if none of the tableware sold in your store requires a warning, you do not need to post any of these materials.

EXHIBIT E: MAIL ORDER HOUSE INSTRUCTIONS

(On letterhead with name, return address and telephone of sender)

Re: Court-ordered Warnings for Ceramic Tableware

Dear Mail Order House:

This letter conveys important materials concerning the need to provide court-ordered warnings for certain ceramic tableware products offered for sale to customers in California. It is very important that you read and follow the instructions enclosed with this letter.

Enclosed are two very important items:

- 1. A list of certain brands and patterns of tableware that contain lead, and for which a warning under Proposition 65 is to be provided.
- 2. Instructions for providing warnings in either your catalogs or brochures or a warning accompanying your products when they are shipped to California customers.

These materials are being provided by tableware manufacturers as part of a court-approved settlement of a legal action brought under "Proposition 65" by the California Attorney General. In this legal action, the Attorney General claims that certain brands and patterns of ceramic tableware contain lead, which passes into food and drink kept in those items. Lead is a chemical known to the State to cause birth defects or other reproductive harm, and the Attorney General claims that manufacturers and retailers of these products are legally required to provide consumers with a clear and reasonable warning of this exposure to lead. The companies sued by the Attorney General dispute these claims, and believe their products are safe, but have agreed to take various actions to settle the case.

If you do not provide these warnings as required, you risk further legal action by the Attorney General or others, in which monetary penalties could be sought.

The tableware contained on the list may be sold to California customers legally because it complies with U.S. FDA standards for lead release. They require a warning because they exceed the stricter lead exposure standards of California's Proposition 65.

Not all suppliers are participating in this court-ordered warning program. Suppliers that are not participating in this program may be providing ceramic tableware that requires Proposition 65 warnings. You should contact your suppliers to determine if they are in compliance with Proposition 65, since failure to comply could subject you to the legal actions referred to above.

Sincerely,

Name and title

MAIL ORDER TABLEWARE WARNING INSTRUCTIONS

Here's what you need to do to comply with the court-ordered warning program:

- 1. Check the list, and see if any of the ceramic tableware you are offering for sale in California is listed as requiring a warning. If your tableware is on the list, or if your supplier of another brand of ceramic tableware informs you that its products require a warning, then you must provide warnings. If your tableware is not on the list, and none of your other suppliers inform you that its products require a warning, then you do not need to provide warnings.
- 2. Provide necessary warnings. If you need to provide warnings you may do so in one of two ways.
- a. Mail Order Catalog or Brochure. The following warning message shall be stated within the mail order catalog or brochure, on the inside front cover, on the same page as any order form, or on the same page as the price, in at least 12 point type with the Designated Symbol at least 3/4 inch:

"Prop. 65 WARNING: Use of certain ceramic tableware for sale in this catalog or brochure will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. Patterns identified in this catalog or brochure with the following symbol are the ones for which this warning is given:
[Designated Symbol]"

The Designated Symbol is a yellow triangle, a copy of which is attached. This symbol must be reproduced in the same color in your catalog or brochure. The Designated Symbol should also be provided for ceramic tableware for which a warning is required, wherever the pattern name and price appear together, in the same size as the name of the pattern, or

EXHIBIT E: Page 3 of 4

Package Insert or Label. Alternatively, a warning may be b. provided with the ceramic tableware requiring a warning by (a) inserting a card or slip of paper measuring at least 4" by 6" in the shipping carton, or (b) affixing a pressuresensitive label measuring at least standard business-card size on the shipping carton, or (c) printing the warning on . the packing slip or customer invoice identifying that ceramic tableware requiring a warning in letters of the same size as the description of the product. The warning shall read as follows: "Prop 65 WARNING: Use of this product will expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. You may return this product for a full refund within 30 days of receipt, if you wish. You may also obtain a list of each pattern of ceramic tableware sold by this company for which the same warning is given."

Upon request by the person receiving that warning, the mail order house shall provide a list of each pattern of ceramic tableware sold by you for which a warning is required.

EXHIBIT F: INSTRUCTIONS TO RESTAURANT SUPPLIERS

(On letterhead with name, return address and telephone of sender)

Re: Court-ordered Warnings for Ceramic Tableware

Dear Restaurant Supplier:

Important material for your restaurant customers concerning the need to provide court-ordered warnings for certain ceramic tableware products that contain lead is attached to this letter. These materials contain a list of certain brands and patterns of ceramic tableware that contain lead, and for which a Proposition 65 warning is to be provided. You are requested to send the enclosed materials to each restaurant that uses ceramic tableware o this list.

These materials are being provided by tableware manufacturers as part of a court-approved settlement of a legal action brought under Proposition 65 by the California Attorney General. In this legal action, the Attorney General claims that certain brands and patterns of ceramic tableware contain lead, which passes into food and drink kept in those items. Lead is a chemical known to the State to cause birth defects or other reproductive harm, and the Attorney General claims that manufacturers and retailers of these products are legally required to provide consumers with a clear and reasonable warning of this exposure to lead. The companies sued by the Attorney General dispute these claims, and believe their products are safe, but have agreed to take various actions to settle the case.

If you do not send these materials as requested, you risk further legal action by the Attorney General or others, in which monetary penalties could be sought.

The tableware contained on the list may be sold and used in your restaurant legally because they comply with U.S. FDA standards for lead release. They require a warning because they exceed the stricter lead exposure standards of California's Proposition 65.

If you need additional materials to send to restaurants, they are available FREE OF CHARGE by calling this toll-free number: 1-800-xxx-xxx

Not all suppliers are participating in this court-ordered warning program. Suppliers that are not participating in this program may be providing ceramic tableware that requires Proposition 65 warnings. You should contact your suppliers to determine if they are in compliance with Proposition 65, since failure to comply could subject you to the legal actions referred to above.

Sincerely,

Name and title

(On letterhead with name, return address and telephone of sender)

Re: Court-ordered Warnings for Ceramic Tableware

Dear Restaurateur:

Important materials concerning the need to provide courtordered warnings for certain ceramic tableware products that contain lead are attached to this letter. It is very important that you read and follow these instructions.

Enclosed are three very important items:

- A list of certain brands and patterns of tableware that contain lead, and for which a warning under Proposition 65 is to be provided.
- Signs for posting in your restaurant (or other food service establishment) IF, and only if, you currently use any tableware for which a warning is required.
- 3. Instructions for posting these signs.

These signs are being provided by tableware manufacturers as part of a court-approved settlement of a legal action brought under Proposition 65 by the California Attorney General. In this legal action, the Attorney General claims that certain brands and patterns of ceramic tableware contain lead, which passes into food and drink kept in those items. Lead is a chemical known to the State to cause birth defects or other reproductive harm, and the Attorney General claims that manufacturers and retailers of these products are legally required to provide consumers with a clear and reasonable warning of this exposure to lead. The companies sued by the Attorney General dispute these claims, and believe their products are safe, but have agreed to take various actions to settle the case.

If you do not post this sign as required, you risk further legal action by the Attorney General or others, in which monetary penalties could be sought.

The tableware contained on the list may be used in your restaurant legally because it complies with U.S. FDA standards for lead release. They require a warning because they exceed the stricter lead exposure standards of California's Proposition 65.

If you need additional signs, they are available FREE OF CHARGE by calling this toll-free number: 1-800-xxx-xxxx

Not all suppliers are participating in this court-ordered warning program. Suppliers that are not participating in this program may be providing ceramic tableware that requires Proposition 65 warnings. You should contact your suppliers to determine if they are in compliance with Proposition 65, since failure to comply could subject you to the legal actions referred to above.

Sincerely,

Name and title

Restaurant Tableware Warning Instructions

Here's what you need to do to comply with the court-ordered warning program:

- 1. Check the list, and see if any of the ceramic tableware used in your establishment is listed as requiring a warning. If your tableware is on the list, or if your supplier of another brand of ceramic tableware informs you that its products require a warning, then you must post the enclosed signs. If your tableware is not on the list, and none of your other suppliers inform you that its products require a warning, then you do not need to post the signs.
- 2. Post the sign. If the tableware used in your establishment requires a warning, then post this sign where it will be seen by your customers before they consume food, such as near the main entrance, or near any podium or desk where people wait to be seated.

If you do not post the sign as required, you risk further legal action by the Attorney General or others, in which monetary penalties could be sought.

Remember, if none of the ceramic tableware used in your restaurant requires a warning, you do not need to post any of these materials.

SAMPLING TABLE - 95% CONFIDENCE LEVEL

UPPER LIMIT = 0.226 ppm.

	0.05								Mean				0.47	0.40			
Std.	0.05	0.06	0.07	0.08	0.09	0.10	0.11	0.12	0.13	0.14	0.15	0.16	0.17	0.18	0.19	0.20	0.21
Dev.																	
0.01 0.02	12 12	12 12	12 12	12 12	12 12	12 12	12 12	12 12	12 12	12 12	12 12	12 12	12 12	12 12	12	12 12	12 12
0.03 0.04 0.05	12 12 12	12 12 12	12 12 12	12 12 12	12 12 12	12 12 12	12 12 12	12 12 12	12 12 12	12 12 12	12 12 12	12 12 12	12 12 12	12 12 12	12 12 12	12 12 12	12 19 29
0.06	12 12		12	12	12	12	12	12	12	12	12	12 12	12	12	12	17	40
0.07 0.08 0.09	12 12 12	12 12 12 12	12 12 12	12 12 12	12	12	12	12	12 12 12	12 12 12 12	12	12 12 12	12 12 12 12	12 12 13	13	22	54 70
0.10	12	12	12	12	12 12	12 12	12 12	12 12	12	12	12 12	12	12	15	19 23	35 42	88 108
0.11 0.12	12 12	12 12 12	12 12	12 12	12 12	13 15	18 21	28 32	51 60	131 156							
0.13 0.14	12	12	12	12	12	12	12	12 12 12	12	12	12	13	17	24	38 43	70 81	183
0.15	12	12 12	12 12	12 12	12	12	12	12	12 12	12 12	13	16	19 22	27 31	49	92	243
0.16 0.17	12 12	12 12	12 12	12 12	12 12	12 12	12 12 12	12 12	12 12	12 13	14 16	18 20	24 27	35 39	56 6 3	105	276 312
0.18 0.19	12 12	12	12	12	12	12	12	12	12 13	14 16	18 19	23 25	30 34	44 49	70 78	133	349 389
0.20	12	12 12	12 12	12 12	12	12 12	12 12	12 12	14	17	21	27	37	54	86	164	431
0.21 0.22	12 12	12 12 12	12 12	12 12	12 12	12 12	12 12	13 14	15 17	19 20	23 25	30 32	40 44	59 64	94 103	181 198	475 521
0.23 0.24	12 12	12	12 12	12 12	12	12 12 12	13	15 16	18 19	22 23	27 29	35 38	48 52	70 76	113	217	569 620
0.25	12	12 12	12	12	12	13	15	17	21	25	32	41	56	82	134	256	673
0.26 0.27	12 12	12 12	12 12 12	12 12 12	12 13	14 15	16 17	19 20	22 24	27 29	34 37	44 48	61 65	8 9 9 6	145 156	276 298	727 784
0.28 0.29	12	12 12	12	13	14 15	16 17	18 19	21 23	25 27	31 33	39 42	51 55	70 75	103	⁻ 180	343	843 905
0.30	12	12	12	14	16	18	20	24	29	35	45	5 8	80	117	192	367	968
=====	===:	====	===	===	===	===	===	===	====	===	===	===	===	<u>_==</u>	===	===:	====

MINIMUM SAMPLE SIZE = 12

SAMPLING TABLE - 95% CONFIDENCE LEVEL

UPPER LIMIT = 0.100 ppm.

	0.01	0.02	0.03	0.04	Mean 0.05	0.06	Q07	 0.08	0.09
Std. Dev. 0.01 0.02 0.03 0.04 0.05	12 12 12 12 12	12 12 12 13 19	12 13 27 46 70						
0.06 0.07 0.08 0.09 0.10	12 12 12 12	12 12 12 12 12	12 12 12 12 12	12 12 12 12 12	12 12 12 12 13	12 12 13 16 19	13 17 22 27 32	27 36 46 57 70	100 136 177 224 276
0.11 0.12 0.13 0.14 0.15	12 12 12 12 12	12 12 12 12 12	12 12 12 13 15	12 13 15 17 19	16 18 21 24 27	23 27 31 36 40	39 46 53 61 70	84 100 117 136 156	334 397 466 540 620
0.16 0.17 0.18	12 12 13	13 15 16	17 18 20	22 24 27	30 34 37	46 51 57	79 89 100	177 200 224	705 796 892

MINIMUM SAMPLE SIZE = 12

Attachment B: Data Requirements

The following data is necessary for the Attorney General to determine the appropriate basis upon which a settlement resolving past liability can be entered:

- A. Test Data.
- A list of all plate patterns and cup patterns offered for sale during the period February 27, 1988 to January 1, 1993.
- 2. All test results for each of the plate and cup patterns tested during the period February 27, 1988 to January 1, 1993. This should include the following:
 - a. The number of plates and cups in each patter that was tested;
 - b. The mean test results for each plate and cup pattern tested;
 - c. The standard deviation for each plate and cup pattern tested; and
 - d. The detection limit for each test.
- B. Sales Data.
- 1. The total number of plates and cups of each pattern that was shipped to California during the period February 27, 1988 to January 1, 1993.
- 2. The classification of each plate pattern and each cup pattern, using one of the following categories:
 - a. Fine china;
 - b. Everyday use china; or
 - c. Restaurant/institutional china;

with an explanation setting forth the basis for the classification.

Attachment B