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11 MIKASA, INC.

12

13 SUPERIOR COURT OF THE STATE OF CALIFORNIA
14 IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
15

16 WHITNEY R. LEEMAN, Ph.D.) No. CGC-03-418030
17 Plaintiff)
18 v.) STIPULATION AND [PROPOSED]
ORDER RE: CONSENT JUDGMENT
19 MIKASA, INC., and DOES 1)
through 150,)
20 Defendants.)
21 _____)

22

23 This Stipulation and [Proposed] Order Re: Consent Judgment
24 ("Agreement" or "Consent Judgment") is entered into by and between
25 plaintiff, Whitney R. Leeman, Ph.D. ("Dr. Leeman" or "Leeman") and
26 defendant Mikasa, Inc. ("Mikasa") on July 7, 2003 (the "Effective
27 Date"). Dr. Leeman and Mikasa are collectively referred to herein
28

1 as the "Parties" and hereby agree to the following terms and
2 conditions:

3 **WHEREAS:**

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

8 B. Mikasa has distributed and sold certain patterns of
9 glassware products containing colored designs or decorations (the
10 "Products") with materials that contain lead (or lead compounds)
11 and cadmium (the "Listed Chemicals");

12 C. A list of the Products which are covered by this
13 Agreement is provided in Exhibit A. Mikasa represents and
14 warrants that for at least the past twelve months the distribution
15 of the Products in the State of California has principally been
16 through its own retail outlet stores; and

17 D. On February 7, 2003, Dr. Leeman first served Mikasa
18 and other public enforcement agencies with a document entitled
19 "60-Day Notice of Violation" which provided Mikasa and such public
20 enforcers with notice that Mikasa was allegedly in violation of
21 Health & Safety Code § 25249.6 for allegedly failing to warn
22 purchasers that certain products it sells in California expose
23 users to one or more Listed Chemicals; and

24 E. On March 5, 2003, Dr. Leeman filed, but did not
25 serve on Mikasa, a complaint for restitution and injunctive relief
26 entitled Whitney R. Leeman, Ph.D. v. Mikasa Inc., et al. in the
27 San Francisco County Superior Court, naming Mikasa as a defendant
28 and alleging violations of Business & Professions Code § 17200 and

1 Business & Professions Code § 17500 on behalf of individuals in
2 California who allegedly have been exposed to one or more Listed
3 Chemicals contained in certain products sold by Mikasa; and

4 F. On April 16, 2003, Dr. Leeman filed, and served on
5 Mikasa, a first amended complaint for restitution, injunctive
6 relief, and civil penalties naming Mikasa as a defendant and
7 alleging violations of Health & Safety Code § 25249.6 on behalf of
8 individuals in California who allegedly have been exposed to one
9 or more Listed Chemicals contained in certain products sold by
10 Mikasa; and

11 G. Nothing in this Consent Judgment shall be construed
12 as an admission by Mikasa of any fact, finding, issue of law, or
13 violation of law; nor shall compliance with this Agreement
14 constitute or be construed as an admission by Mikasa of any fact,
15 finding, conclusion, issue of law, or violation of law. However,
16 this paragraph shall not diminish or otherwise affect the
17 obligations, responsibilities, and duties of the Parties under
18 this Agreement.

19 **NOW THEREFORE, WHITNEY R. LEEMAN, Ph.D. AND MIKASA, INC. HEREBY**
20 **STIPULATE AND AGREE AS FOLLOWS:**

21 1. **Product Warnings.** Mikasa shall immediately begin
22 to provide warnings with regard to its sale of the Products in
23 California by providing the language set forth in sections 1.1(a)
24 and 1.1(b) below. Mikasa agrees that it will not knowingly sell
25 any Products containing the Listed Chemicals in the State of
26 California unless such Products comply with sections 1.1 or 1.2
27 below:

28

1 1.1(a) Beginning within thirty (30) days after
2 the Effective Date, for all Products sold in Mikasa's California
3 retail outlet stores, the following warning statement shall be
4 given for the Products at or near their point of sale or display:

5 **"WARNING:** The materials used as colored decorations
6 on the exterior of glassware products
7 sold in this store contain lead, a
8 chemical known to the State of California
 to cause birth defects or other
 reproductive harm."

9 The warning statement shall be prominently placed with such
10 conspicuousness as compared with other words, statements, designs,
11 or devices as to render it likely to be read and understood by an
12 ordinary individual under customary conditions of purchase. The
13 sign attached as Exhibit B hereto may be used for this purpose
14 provided that Mikasa does not also knowingly sell Products which
15 otherwise meet the definition of Reformulated Products set forth
16 in Paragraph 1.2 below at the retail outlet at which the sign will
17 be used. In the event that a retail outlet knowingly sells
18 Products which otherwise meet the definition of Reformulated
19 Products set forth in Paragraph 1.2 below, the name(s) of the
20 pattern(s) of any such Products shall be delineated on the sign
21 with an explanation that the warning statement does not apply to
22 such pattern(s). The font size of such delineation may be smaller
23 than the size of the warning statement referenced above provided
24 that it is legible to the consumer. An exemplar of such a
25 modified sign is appended hereto as Exhibit C. Mikasa may affix
26 the sign to the top of each service counter at which a cash
27 register is proximately located provided that the warning shall
28 not be obscured from plain view (except by the placement of

1 merchandise by a customer) and shall be at least the same size and
2 contain the same language and format as that appearing on Exhibit
3 B or C. Any changes to the language, format, size, or posting
4 location of the warning required by this paragraph shall only be
5 made following: 1) the provision of written notice to counsel to
6 Leeman and, 2) following provision to Leeman's counsel of fifteen
7 (15) days for the opportunity to comment, receipt of approval from
8 the California Attorney General's office.

9 **1.1(b)** Beginning within forty-five (45) days of
10 the Effective Date, Mikasa shall initiate or otherwise arrange for
11 revisions or retrofits to current labels for any Products shipped
12 to California by Mikasa for sale by others to include the warning
13 statement appearing below. Mikasa shall use reasonable efforts to
14 ensure that all Products in its possession intended for shipment
15 to California for sale by others are packaged using the below
16 warning statement as quickly as possible; however, as of sixty
17 (60) days following the Effective Date, Mikasa shall not ship to
18 California any of the Products for sale by others unless each such
19 Product contains the following warning on its consumer packaging:

20 **"WARNING:** The materials used on the exterior
21 decoration of this product contain lead,
22 a chemical known to the State of
 California to cause birth defects or
 other reproductive harm."

23 The warning statement shall be prominently placed with such
24 conspicuousness as compared with other words, statements, designs,
25 or devices as to render it likely to be read and understood by an
26 ordinary individual under customary conditions of purchase. The
27 label attached as Exhibit D hereto may be used for this purpose.
28 Mikasa may affix the label to the Product's packaging provided

1 that the packaging is available to the plain view of the consumer
2 prior to purchase and the label has at least the same size and
3 contain the same language and format as that appearing on Exhibit
4 D. Any changes to the language, format, size, or location of the
5 warning required by this paragraph shall only be made following:
6 1) the provision of written notice to counsel to Leeman, and, 2)
7 following provision to Leeman's counsel of fifteen (15) days for
8 the opportunity to comment, receipt of approval from the
9 California Attorney General's office.

10 1.2 The warnings required pursuant to
11 Paragraphs 1.0 and 1.1(a) and (b) above shall not be required for
12 Products which:

13 (a) if the painted decoration is solely on the exterior of the
14 Product exclusive of the top 20 millimeters of the ware (i.e.,
15 below the exterior portion of the lip and rim area as defined
16 by American Society of Testing and Materials Standard Test
17 Method C927-99, hereinafter the "Lip and Rim Area"), produce
18 either a nondetectable test result or a test result no higher
19 than 1.0 micrograms (ug) of lead (depending on whether flame
20 AAS or graphite furnace AAS is applied for the analysis
21 respectively, which shall be at Mikasa's sole option) using a
22 Ghost Wipe™ test applied on painted portions of the surface of
23 the Product performed as outlined in NIOSH method no. 9100; or
24
25 (b) if the painted decoration extends into the exterior Lip
26 and Rim Area or the interior (food contact surface) of the
27 Product, a test result acceptable under subparagraph (a) above,
28 and (1) a result of 0.5 micrograms/milliliter (ug/ml) of lead

1 or less using ASTM method C 927-99 with respect to any
2 decoration in the Lip and Rim area and/or (2) a result of 0.1
3 parts per million (ppm) of lead or less using AOAC/ASTM method
4 973.32 with respect to any decoration on the interior (food
5 contact surface) if the Product is holloware or a result of
6 0.226 ppm of lead or less using AOAC/ASTM method 973.32 with
7 respect to any decoration on the interior (food contact
8 surface) if the Product is flatware; or

9
10 (c) utilize paints on all decorations containing four one-
11 hundredths of one percent (0.04%) lead by weight or less (as
12 measured by a sample size of the paint measuring approximately
13 50-100 mg) and contain no painted decoration within any part of
14 the interior (food contact surface) of the Product or in the
15 Lip and Rim Area of the Product.

16
17 Should any court enter a final judgment in a case brought by Leeman,
18 another citizen enforcer, or the People involving glassware or
19 drinkware products with decoration containing lead which sets forth
20 standards defining when Proposition 65 warnings will or will not be
21 required ("Alternative Standards"), Mikasa shall be entitled to seek
22 a modification of this Consent Judgment so as to be able to utilize
23 and rely on such Alternative Standards in lieu of those set forth in
24 subsections (a), (b), or (c) of this Paragraph; Leeman shall not
25 unreasonably contest any proposed application to effectuate such a
26 modification provided that the Products for which such a
27 modification are sought are substantially similar in type and
28 function to those for which the Alternative Standards apply.

1 Products satisfying the conditions of this Paragraph are hereinafter
2 referred to as "Reformulated Products".

3 **2. Payment Pursuant To Health & Safety Code**

4 **\$25249.7(b)**. Pursuant to Health & Safety Code § 25249.7(b), Mikasa
5 shall pay \$95,000.00 in civil penalties. This amount shall be
6 paid, subject to the potential reduction specified in Paragraph
7 2.1 below and according to the following schedule:

8 (a) 17,000.00 shall be paid within ten (10) calendar days of
9 the Effective Date;

10

11 (b) an additional \$21,000.00 shall be paid within sixty (60)
12 days of the Effective Date if there has been no written
13 certification provided to Leeman's counsel by Mikasa pursuant
14 to Paragraph 2.1(a);

15

16 (c) another additional \$27,000.00 shall be paid within one
17 hundred twenty (120) days of the Effective Date if there has
18 been no written certification provided to Leeman's counsel by
19 Mikasa pursuant to Paragraph 2.1(b); and

20

21 (d) a final additional \$30,000.00 shall be paid within one
22 hundred eighty (180) days of the Effective Date if there has
23 been no written certification provided to Leeman's counsel by
24 Mikasa pursuant to Paragraph 2.1(c).

25

26 The penalty payments specified above are, where applicable, to be
27 made payable to "Sheffer & Chanler LLP In Trust For Whitney R.
28 Leeman." In the event that Mikasa pays any penalty and the Consent

1 Judgment is not thereafter approved and entered by the Court, Leeman
2 shall return any penalty funds paid under this paragraph within
3 fifteen (15) days of receipt of a written request from Mikasa
4 following notice of issuance of the Court's decision. In the event
5 the Consent Judgment is entered by the Court, those penalty monies
6 received shall be apportioned by Dr. Leeman in accordance with
7 Health & Safety Code § 25192, with 75% of these funds remitted to
8 the State of California's Department of Toxic Substances Control.

9 **2.1 Reformulation Options.** The Parties hereby
10 agree that the total amount of civil penalties established in
11 Paragraph 2 above shall be subject to the following
12 reductions/waivers:

13 (a) the payments otherwise required by Paragraph 2(b), shall
14 be waived if, within five (5) days of the date that such
15 payment would otherwise be due, Mikasa provides written
16 certification to Leeman's counsel that it, as a matter of
17 official corporate policy, intends to undertake good faith
18 efforts to obtain Products meeting the criteria for
19 Reformulated Products as set forth in Paragraph 1.2 above with
20 respect to those patterns of Products it wishes to continue to
21 offer for sale in California;

22

23 (b) the payment otherwise required by Paragraph 2(c) shall be
24 waived in its entirety if, within five (5) days of the date
25 that such payment would otherwise be due, Mikasa provides
26 written certification and substantiating documentation to
27 Leeman's counsel that it has in fact begun to employ actual and
28 substantial efforts to cause Products to be redesigned or

1 reformulated so that, pursuant to Section 1.2, no warning will
2 be necessary on Products sold in Mikasa's California retail
3 outlet stores or Products shipped to California by Mikasa for
4 sale by others within eight (8) months thereafter.
5 Documentation that shall be deemed to meet the requirements of
6 this paragraph may include, but is not limited to, evidence of
7 communications with multiple suppliers concerning their ability
8 to provide Mikasa with Products meeting the criteria set forth
9 for Reformulated Products pursuant to Section 1.2 above,
10 requests for samples of Products from suppliers who purport to
11 be able to meet the criteria set forth for Reformulated
12 Products pursuant to Section 1.2 above, results of testing on
13 Products assessing their ability to meet the criteria set forth
14 for Reformulated Products pursuant to Section 1.2 above, and/or
15 orders placed for initial shipments of Reformulated Products
16 intended for commercial sale;

17
18 (c) the payment otherwise required by Paragraph 2(d) shall be
19 waived in its entirety if, within five (5) days of the date
20 that such payment would otherwise be due, Mikasa provides
21 written certification to Leeman's counsel that each Product
22 sold in Mikasa's California retail outlet stores and all
23 Products shipped to California by Mikasa for sale by others
24 will in fact meet the criteria for Reformulated Products (as
25 detailed in Section 1.2) within one hundred eighty (180) days
26 thereafter.

27
28 The Parties agree that Mikasa's potential interest in and ability to

1 acquire and market Reformulated Products is to be accounted for in
2 this Paragraph and, since it is not a remedy provided for by law,
3 the absence of Mikasa previously acquiring or marketing Reformulated
4 Products is not relevant to the establishment of a penalty amount
5 pursuant to Paragraph 2 above.

6 **3. Reimbursement of Attorneys' Fees And Costs.** The
7 parties acknowledge that Dr. Leeman and her counsel offered to
8 resolve this dispute without reaching terms on the amount of fees
9 and costs to be reimbursed to them, thereby leaving this fee issue
10 to be resolved after the material terms of the agreement had been
11 settled. Mikasa then expressed a desire to resolve the fee and
12 cost issue shortly after the other settlement terms had been
13 finalized. The parties then attempted to (and did) reach an
14 accord on the compensation due to Dr. Leeman and her counsel under
15 the private attorney general doctrine codified at Code of Civil
16 Procedure § 1021.5 for all work performed through the Effective
17 Date of the Agreement.

18 Under the private attorney general doctrine codified at Code
19 of Civil Procedure section 1021.5, Mikasa shall reimburse Dr.
20 Leeman and her counsel for fees and costs, incurred as a result of
21 investigating, bringing this matter to Mikasa's attention,
22 litigating and negotiating a settlement in the public interest.
23 Mikasa shall pay Dr. Leeman and her counsel \$40,000.00 for all
24 attorneys' fees, expert and investigation fees, and litigation
25 costs incurred with respect to this matter within ten (10)
26 calendar days of the Effective Date. Payment should be made
27 payable to "Sheffer & Chanler LLP." In the event that Mikasa pays
28 any funds pursuant to this paragraph and the Consent Judgment is

1 not thereafter approved and entered by the Court, Leeman shall,
2 upon Mikasa's written request, return any funds paid under this
3 paragraph within fifteen (15) days of effective written notice of
4 the Court's decision.

5 **4. Post-Execution Activities.** The Parties acknowledge
6 that, pursuant to Health & Safety Code §25249.7, a noticed motion
7 is required to obtain judicial approval of this Agreement.
8 Accordingly, the Parties agree to use their best efforts to file a
9 *Joint Motion to Approve the Agreement* ("Joint Motion"), the first
10 draft of which Mikasa shall prepare, within a reasonable period of
11 time after execution of this Agreement (i.e., not to exceed
12 fourteen (14) days unless otherwise agreed to by Leeman's counsel
13 based on unanticipated circumstances). Leeman's counsel shall
14 prepare a declaration in support of the Joint Motion which shall,
15 *inter alia*, set forth a statement detailing the fees and costs to
16 be reimbursed pursuant to Paragraph 3. Mikasa shall have no
17 additional responsibility to Leeman or Leeman's counsel pursuant
18 to C.C.P. §1021.5 or otherwise with regard to reimbursement of any
19 fees and costs incurred with respect to the preparation and filing
20 of the Joint Motion and its supporting declaration or with regard
21 to Leeman's counsel appearing for a hearing or related proceedings
22 thereon.

23 **5. Dr. Leeman's Release of Mikasa.** Dr. Leeman, by
24 this Agreement, on behalf of herself, her agents, representatives,
25 attorneys, assigns and in the interest of the general public,
26 waives all rights to institute or participate in, directly or
27 indirectly, any form of legal action, and releases all claims,
28 liabilities, obligations, losses, costs, expenses, fines and

1 damages, against Mikasa and its respective distributors,
2 customers, retailers, directors, officers, employees, parents,
3 corporate affiliates (such as sister companies within the same
4 corporate family), successors and assigns, whether under
5 Proposition 65 or the Business & Profession Code § 17200 et seq.
6 or § 17500 et seq. based on Mikasa's alleged failure to warn about
7 exposure to lead (or lead compounds) contained in any of the
8 Products. Dr. Leeman, by this Agreement, on behalf of herself,
9 her agents, representatives, attorneys, and assigns, also waives
10 all rights to institute or participate in, directly or indirectly,
11 any form of legal action, and releases all claims, liabilities,
12 obligations, losses, costs, expenses, fines and damages, against
13 Mikasa and its respective distributors, customers, retailers,
14 directors, officers, employees, parents, corporate affiliates
15 (such as sister companies within the same corporate family),
16 successors and assigns, under Proposition 65 or the Business &
17 Profession Code § 17200 et seq. or § 17500 et seq. based on
18 Mikasa's alleged failure to warn about exposure to Listed
19 Chemicals. The releases provided for by this paragraph shall not
20 extend to any manufacturer of the Products or other entities that
21 supply the Products to Mikasa.

22 **6. Mikasa's Release Of Dr. Leeman.** Mikasa, by this
23 Agreement, waives all rights to institute any form of legal action
24 against Dr. Leeman and her attorneys or representatives, for all
25 actions or statements made by Dr. Leeman, and her attorneys or
26 representatives, in the course of seeking enforcement of
27 Proposition 65 or California Business & Profession Code § 17200 or
28 § 17500 against Mikasa in this Action.

1 7. **Sales Data.** Mikasa understands that the sales data
2 provided to counsel for Dr. Leeman by Mikasa was a material factor
3 upon which Dr. Leeman has relied to determine the amount of
4 payments made pursuant to Health & Safety Code § 25249.7(b) in
5 this Agreement. To the best of Mikasa's knowledge, the sales data
6 provided is true and accurate. In the event that Dr. Leeman
7 discovers facts that demonstrate to a reasonable degree of
8 certainty that the sales data is materially inaccurate, the
9 parties shall meet in a good faith attempt to resolve the matter
10 within ten (10) days of Mikasa's receipt of notice from Dr. Leeman
11 of her intent to challenge the accuracy of the sales data. If
12 this good faith attempt fails to resolve Dr. Leeman's concerns,
13 Dr. Leeman shall have the right to re-institute an enforcement
14 action against Mikasa, for those additional Products, based upon
15 any existing 60-Day Notices of violation served on Mikasa. In
16 such case, all applicable statutes of limitation shall be deemed
17 tolled for the period between the date Dr. Leeman filed the
18 instant action and the date Dr. Leeman notifies Mikasa that she is
19 re-instituting the action for the additional Products. Provided,
20 however, that: a) Dr. Leeman shall not have the option of
21 exercising her rights under this Paragraph more than one year
22 following the Effective Date and, b) Mikasa shall have no
23 additional liability, and Dr. Leeman waives any claims that might
24 otherwise be asserted, from the Effective Date until the date that
25 Dr. Leeman provides notice under this Section 6.0, so long as
26 Mikasa has complied with the requirements of Paragraph 1.1 for all
27 of the Products, including those numbers of Products additionally
28 discovered.

1 **8. Court Approval.** If, for any reason, this Consent
2 Judgment is not ultimately approved by the Court within one
3 hundred eighty (180) days following the Effective Date, this
4 Agreement shall, unless otherwise agreed in writing by the
5 Parties, be deemed null and void, and all monies provided to
6 Dr. Leeman or her counsel shall be refunded to Mikasa within
7 fifteen (15) days after receipt of written notice to Leeman's
8 counsel from Mikasa pursuant to this Paragraph.

9 **9. Severability.** In the event that any of the
10 provisions of this Agreement are held by a court to be
11 unenforceable, the validity of the enforceable provisions shall
12 not be adversely affected.

13 **10. Attorney's Fees.** In the event that a dispute
14 arises with respect to any provision(s) of this Agreement
15 (including, but not limited to, disputes arising from the
16 provisions in paragraphs 2 and 3), the prevailing party shall be
17 entitled to recover costs and reasonable attorneys' fees. This
18 provision, however, shall not apply to the procedures set forth in
19 Paragraph 3.2 above, which shall govern on its own terms.

20 **11. Governing Law.** The terms of this Agreement shall
21 be governed by the laws of the State of California and shall apply
22 within the State of California.

23 **12. Notices.** All correspondence to Dr. Leeman shall be
24 mailed to:

25 Gregory Sheffer
26 Sheffer & Chanler
27 160 Sansome Street, 2nd Floor
28 San Francisco, CA 94104-3706

1 All correspondence to Mikasa shall be mailed to:

2 Robert L. Falk, Esq.
3 Morrison & Foerster, LLP
4 425 Market Street
5 San Francisco, CA 94105-2482

6 and

7 Matt Petrillo
8 Mikasa, Inc.
9 One Mikasa Drive
10 Secaucus, NJ 07096

11 **13. Compliance With Reporting Requirements (Health &**
12 **Safety Code §25249.7(f)).** Dr. Leeman agrees to comply with the
13 reporting form requirements referenced in 11 Cal. Code Regs §
14 3000, et seq. Pursuant to the regulations promulgated under 11
15 Cal. Code Regs § 3003, Dr. Leeman shall present this Consent
16 Judgment to the California Attorney General's office within two
17 (2) days of time after receiving all necessary signatures. A
18 noticed motion to enter the Consent Judgment will then be served
19 on the Attorney General's office at least forty-five (45) days
20 prior to the date a hearing is scheduled on such a motion in the
21 San Francisco Superior Court.

22 **14. Counterparts and Facsimile.** This Agreement may be
23 executed in counterparts and facsimile, each of which shall be
24 deemed an original, and all of which, when taken together, shall
25 constitute one and the same document.
26
27
28

1 15. Authorization. The undersigned are authorized to
2 execute this Agreement on behalf of their respective parties and
3 have read, understood and agree to all of the terms and conditions
4 of this Agreement.

5 AGREED TO:
6
7 DATE: _____

AGREED TO:
DATE: 7/8/03

8
9 Plaintiff, Whitney R. Leeman

Matt Petillo V.P.
Defendant, Mikasa, Inc.

10
11 APPROVED AS TO FORM:
12
13 DATE: _____

APPROVED AS TO FORM:
DATE: 7/8/03

14
15 Gregory M. Sheffer
16 Attorneys for Plaintiff
WHITNEY R. LEEMAN

Robert L. Falk
Robert L. Falk
Attorneys for Defendant
MIKASA, INC.

17
18 IT IS ORDERED, ADJUDGED AND DECREED that judgment is
19 hereby entered in accordance with the terms of this Consent Judgment
20 between the parties.
21

22 Dated: _____, 2003

Judge of the Superior Court