

# **SETTLEMENT AGREEMENT**

## **1. INTRODUCTION**

### **1.1 Dr. Whitney R. Leeman and Gekkeikan Sake (U.S.A.), Inc.**

This Settlement Agreement is entered into by and between Dr. Whitney R. Leeman (“Leeman”) and Gekkeikan Sake (U.S.A.), Inc. (“Gekkeikan”), with Leeman and Gekkeikan collectively referred to as the “Parties.” Leeman is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products. Gekkeikan employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.5 *et seq.* (“Proposition 65”).

### **1.2 General Allegations**

Leeman alleges that Gekkeikan has manufactured, imported, sold and/or distributed for sale in California sake glasses with exterior designs containing lead. Lead is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

### **1.3 Product Description**

The products that are covered by this Settlement Agreement are defined as sake glasses and glass decanters with exterior designs containing lead that accompany or are sold in association with Gekkeikan sake, including, but not limited to, those contained in the *Gekkeikan Black & Gold Gift Set, UPC #7 28817 19965 5* and which are manufactured, imported, sold and/or distributed for sale in California by Gekkeikan or its master U.S. distributor, Sidney Frank Importing Co., Inc. (“SFI”) (hereinafter the “Products”).

### **1.4 Notice of Violation**

On July 30, 2014, Leeman served Gekkeikan, Costco Wholesale Corporation and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“Notice”) that

provided the recipients with notice of alleged violations of Proposition 65 based on Gekkeikan's alleged failure to warn its customers, consumers, workers and other individuals that the Products exposed users in California to lead. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

### **1.5 No Admission**

Gekkeikan denies the material factual and legal allegations contained in Leeman's Notice and it and SFI maintain that all products that it has manufactured, imported, distributed, and/or sold in California, including the Products, have been and are in compliance with all laws. Nothing in this Settlement Agreement shall be construed as an admission by Gekkeikan or SFI of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Settlement Agreement constitute or be construed as an admission by Gekkeikan or SFI of any fact, finding, conclusion, issue of law, or violation of law. However, this section shall not diminish or otherwise affect Gekkeikan's obligations, responsibilities, and duties under this Settlement Agreement.

### **1.6 Effective Date**

For purposes of this Settlement Agreement, the term "Effective Date" shall mean December 10, 2014.

## **2. INJUNCTIVE RELIEF: REFORMULATION**

### **2.1 Reformulation Standards**

For the purposes of this Settlement Agreement, "Reformulated Products" are defined as:

- (a) Products with exterior artwork decorations containing a total lead content of less than or equal to 90 parts per million ("ppm") when analyzed pursuant to Environmental Protection Agency testing methodologies 3050B and/or 6010B, such tests shall not include any glass substrate to which the exterior artwork decorations are applied.

- (b) Products manufactured after the Effective Date shall also *not* contain any designs or decorations within the top twenty (20) millimeters of the exterior surface ( “lip and rim area”), except:
- i. metallic-based banding containing lead as a contaminant and which such contaminant lead is not detectable at a level of quantitation set at 90 ppm; and
  - ii. drinkware that has less than a total of sixty (60) millimeters of decorating area below the lip and rim area (e.g., shot glasses) **and** which has decoration that extends into the lip and rim area due only to a design which is primarily located beneath it **and** which extends into only a minority portion of the overall lip and rim surface area, **and** provided, as required by Section 2.1(a) above, that such drinkware shall only be manufactured with decorating materials containing less than 90 ppm of lead as measured before the material is fired onto (or otherwise affixed to) the glassware.

## **2.2 Reformulation Commitment**

As of the Effective Date all Products manufactured, imported, distributed, sold, and/or offered for sale in the State of California by, or on behalf of, Gekkeikan via SFI or otherwise shall be Products that qualify as Reformulated Products as defined in Section 2.1 above.

## **3. MONETARY PAYMENTS**

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

In settlement of all the claims referred to in this Settlement Agreement, Gekkeikan has been assessed a total of \$12,800 in civil penalties in accordance with this Section. The penalty payment shall be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Leeman.

More specifically, on or before December 30, 2014, Gekkeikan shall provide its civil penalty payment in two checks to: (a) “OEHHA” in the amount of \$9,600; and (b) “Dr. Whitney R. Leeman, Client Trust Account” in the amount of \$3,200. These civil penalty payments shall be delivered to the addresses for Leeman and OEHHA listed in Section 3.3 below.

### **3.2 Reimbursement of Fees and Costs**

The parties acknowledge that Leeman and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee reimbursement issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been finalized, Gekkeikan expressed a desire to resolve the fee and cost issue. The parties then attempted to (and did) reach an accord on the compensation due to Leeman and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this agreement. Gekkeikan shall pay \$37,200 for fees and costs incurred as a result of investigating, bringing this matter to Gekkeikan's attention, and negotiating a settlement in the public interest. Gekkeikan shall make the check payable to "The Chanler Group" and shall deliver payment on or before December 30, 2014, to the address listed in Section 3.3.1(a) below.

### **3.3 Payment Procedures**

#### **3.3.1 Issuance of Payments**

(a) All payments owed to Leeman and her counsel, pursuant to Sections 3.1 and 3.2 shall be delivered to the following payment address:

The Chanler Group  
Attn: Proposition 65 Controller  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710

(b) All payments owed to OEHHA, pursuant to Section 3.1, shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses, as appropriate:

For United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
P.O. Box 4010  
Sacramento, CA 95812-4010

For Non-United States Postal Service Delivery:

Mike Gyurics  
Fiscal Operations Branch Chief  
Office of Environmental Health Hazard Assessment  
1001 I Street  
Sacramento, CA 95814

**3.3.2 Proof of Payment.** A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth in Section 3.3.1(a) above, as proof of payment to OEHHA.

**4. CLAIMS COVERED AND RELEASED**

**4.1 Leeman's Release of Gekkeikan**

This Settlement Agreement is a full, final and binding resolution between Leeman and Gekkeikan of any violation of Proposition 65 that was or could have been asserted by Leeman on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, against Gekkeikan, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys and each entity to whom Gekkeikan directly or indirectly distributes or sells Products including, but not limited to, SFI, Gekkeikan's or SFI's downstream distributors, wholesalers, customers, retailers (including but not limited to Costco Wholesale Corporation), franchisees, cooperative members and licensees ("Releasees"), based on their failure to warn about alleged exposures to lead contained in the Products that were manufactured, imported, distributed, sold and/or offered for sale by Gekkeikan (either directly or through SFI or the Releasees) in California before the Effective Date. This release is provided in Leeman's individual capacity and is not a release on behalf of the public.

In further consideration of the promises and agreements herein contained, Leeman on behalf of herself, her past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all of her rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that she may have including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses -- including, but not limited to, investigation

fees, expert fees and attorneys' fees -- limited to and arising respect to lead in the Products manufactured, imported distributed, sold and/or offered for sale by Gekkeikan (either directly or through SFI or the Releasees) before the Effective Date.

#### **4.2 Gekkeikan's Release of Leeman**

Gekkeikan, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees (including SFI), hereby waives any and all claims against Leeman and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Leeman and her attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter or with respect to the Products.

#### **5. SEVERABILITY**

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

#### **6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California. In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Settlement Agreement are rendered inapplicable or are no longer required as a result of any such repeal or preemption, or rendered inapplicable by reason of law generally as to the Products, then Gekkeikan shall provide written notice to Leeman of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected. Nothing in this Settlement Agreement shall be interpreted to relieve Gekkeikan from any obligation to comply with any pertinent state or federal law, including all alcoholic beverage control laws.

7. **NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (i) personal delivery, (ii) first-class registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the other party at the following addresses:

To Defendant Gekkeikan Sake (U.S.A.), Inc.:

Masahiro Namise, President, President  
Gekkeikan Sake (U.S.A.), Inc.  
1136 Sibley Street  
Folsom, CA 95630

*with a copy to:*

Robert Falk/Misako Sack  
Morrison & Foerster LLP  
425 Market Street, 32<sup>nd</sup> Fl.  
San Francisco, CA 94105

*and with a further copy to:*

Michael Rudy  
Associate General Counsel, Vice President  
Sidney Frank Importing Co., Inc.  
20 Cedar Street, Suite 203  
New Rochelle, New York 10801

To Plaintiff Dr. Whitney R. Leeman:

Proposition 65 Coordinator  
The Chanler Group  
2560 Ninth Street  
Parker Plaza, Suite 214  
Berkeley, CA 94710-2565

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

8. **COUNTERPARTS; FACSIMILE AND SIGNATURES**

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

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

Leeman and her attorneys agree to comply with the reporting form requirements referenced in California Health & Safety Code section 25249.7(f).

10. **MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties.

11. **AUTHORIZATION**

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

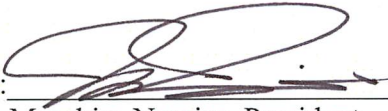
**AGREED TO:**

**AGREED TO:**

Date: December 8, 2014

Date: December 10, 2014

By:   
Whitney R. Leeman

By:   
Masahiro Namise, President  
Gekkeikan Sake (U.S.A.), Inc.