

EXHIBIT A

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2
3 Handpainted gGlassware products decorated on exterior portions with
4 paint that contains lead (or lead compounds), including, but not
5 limited to, the following patterns of handpainted glassware products:
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- 7 (1) San Nicolo (Dansk), (2) Butterfly Meadows (Lenox), (3) Tulip
8 (Dansk), (4) Morelo (Dansk), (5) Blueberries (Dansk), (6) Sage Song
9 (Dansk), (7) Kobenhavn (Dansk), and (8) Tuscan (Dansk)

1 Dated: _____, 2002

Judge of the Superior Court

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

5 **AGREED TO:**

6 **AGREED TO:**

7
8 DATE: _____

9 DATE: _____

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11 _____
12 Plaintiff, Michael DiPirro

13 _____
14 Defendant, Dansk International
15 Designs, Ltd., a subsidiary of
16 Lenox, Incorporated

17 **APPROVED AS TO FORM:**

18 **APPROVED AS TO FORM:**

19
20 DATE: _____

21 DATE: _____

22 _____
23 Clifford A. Chanler
24 Attorneys for Plaintiff
25 MICHAEL DIPIRRO

26 _____
27 Robert L. Falk
28 Attorneys for Defendant
DANSK INTERNATIONAL DESIGNS, LTD., a
subsidiary of Lenox, Incorporated

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that judgment be
entered in accordance with the terms of the attached Consent Judgment
between the parties.

1 Louis A. Fantin, Esq.
2 Senior Vice President, Secretary and General Counsel
3 Lenox, Incorporated
4 100 Lenox Drive
Lawrenceville, NJ 08648

5
6 **12. Compliance With Reporting Requirements (Health & Safety**
7 **Code §25249.7(f)).** The parties agree to comply with the reporting form
8 requirements referenced in Health & Safety Code §25249.7(f). Pursuant
9 to the new regulations promulgated under Health & Safety Code
10 §25249.7(f), DiPirro shall present this Consent Judgment and a noticed
11 motion for its consideration by the Court to the California Attorney
12 General's office within a reasonable period of time after receiving
13 all necessary signatures. It will then be presented to the San
14 Francisco County Superior Court for a hearing scheduled not earlier
15 than forty five (45) days later.

17 **13. Counterparts and Facsimile.** This Agreement may be
18 executed in counterparts and facsimile, each of which shall be deemed
19 an original, and all of which, when taken together, shall constitute
20 one and the same document.
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1 be deemed null and void.

2 **8. Severability.** In the event that any of the provisions
3 of this Agreement are held by a court to be unenforceable, the
4 validity of the enforceable provisions shall not be adversely
5 affected.
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7 **9. Attorney's Fees.** In the event that a dispute arises
8 with respect to any provision(s) of this Agreement (including, but not
9 limited to, disputes arising from the provisions in paragraphs 2 and
10 3), the prevailing party shall be entitled to recover costs and
11 reasonable attorneys' fees. This provision, however, shall not apply
12 to the procedures set forth in Paragraphs 3.2-3.5 above, which shall
13 govern on their own terms.
14

15 **10. Governing Law.** The terms of this Agreement shall be
16 governed by the laws of the State of California.

17 **11. Notices.** All correspondence to Michael DiPirro shall
18 be mailed to:

19
20 Gregory Sheffer or Clifford Chanler
21 Sheffer & Chanler
22 4400 Keller Ave., Suite 200
23 Oakland, CA 94605

24 All correspondence to Dansk shall be mailed to:

25 Robert L. Falk, Esq.
26 Morrison & Foerster, LLP
27 425 Market Street
28 San Francisco, CA 94105-2482

and

1 the best of Dansk's knowledge, the sales data provided is true and
2 accurate. In the event that DiPirro discovers facts that demonstrate
3 to a reasonable degree of certainty that the sales data is materially
4 inaccurate, the parties shall meet in a good faith attempt to resolve
5 the matter within ten (10) days of Dansk's receipt of notice from
6 DiPirro of his intent to challenge the accuracy of the sales data. If
7 this good faith attempt fails to resolve DiPirro's concerns, DiPirro
8 shall have the right to re-institute an enforcement action against
9 Dansk, for those additional Products, based upon any existing 60-Day
10 Notices of violation served on Dansk. In such case, all applicable
11 statutes of limitation shall be deemed tolled for the period between
12 the date DiPirro filed the instant action and the date DiPirro
13 notifies Dansk that he is re-instituting the action for the additional
14 Products. Provided, however, that: a) DiPirro shall not have the
15 option of exercising his rights under this Paragraph more than one
16 year following the Effective Date and, b) Dansk shall have no
17 additional liability, and DiPirro waives any claims that might
18 otherwise be asserted, from the Effective Date until the date that
19 DiPirro provides notice under this Section 6.0, so long as Dansk has
20 complied with the requirements of Paragraphs 1.1(a) or (b) for all of
21 the Products, including those numbers of Products additionally
22 discovered.

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27 **7. Court Approval.** If, for any reason, this Consent

28 Judgment is not ultimately approved by the Court, this Agreement shall

1 corporate affiliates (such as sister companies within the same
2 corporate family), successors and assigns, whether under Proposition
3 65 or the Business & Profession Code §17200 et seq. or 17500 et seq.
4 based on Dansk's alleged failure to warn about exposure to the Listed
5 Chemicals contained in any of the Products. The preceding sentence
6 includes, but is not limited to, a waiver and release of claims
7 against Lenox, Incorporated (the parent of Dansk), Brown-Forman
8 Corporation (the parent of Lenox, Incorporated) and J.C. Penney
9 Company, Inc. (one of Dansk's customers, which has been named by
10 DiPirro in San Francisco Superior Court Case No. 407150); however,
11 this release does not address products at issue in San Francisco
12 Superior Court Case No. 407150 other than the Products as defined in
13 Exhibit A hereto.

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16 **5. Dansk International Designs, Ltd.'s Release Of Michael**
17 **DiPirro.** Dansk, by this Agreement, waives all rights to institute any
18 form of legal action against Michael DiPirro and his attorneys or
19 representatives, for all actions or statements made by Michael
20 DiPirro, and his attorneys or representatives, in the course of
21 seeking enforcement of Proposition 65 or California Business &
22 Profession Code §17200 or 17500 against Dansk in this Action.

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24 **7. Sales Data.** Dansk understands that the sales data
25 provided to counsel for DiPirro by Dansk was a material factor upon
26 which DiPirro has relied to determine the amount of payments made
27 pursuant to Health & Safety Code §25249.7(b) in this Agreement. To
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1 costs pursuant to sections 3.1-3.4 shall be due within fifteen (15)
2 calendar days after receipt of notice of entry of this Consent
3 Judgment ("Additional Fee Claim"). Payment of the Additional Fee
4 Claim shall be made payable to the "Sheffer & Chanler LLP." Dansk has
5 the right to object to DiPirro's reimbursement request and may submit
6 the resolution of this issue to the American Arbitration Association
7 (AAA) in Northern California to determine the reasonableness of the
8 additional fees and costs sought. Any arbitration claim on this issue
9 of reimbursement for the Additional Fee Claim must be filed with AAA
10 and served on DiPirro within fifteen (15) calendar days following
11 DiPirro's service of the Additional Fee Claim on Dansk. If an
12 arbitration notice is not filed with AAA in a timely manner, Dansk's
13 right to arbitrate this matter is waived. DiPirro may then file a
14 motion, pursuant to C.C.P. §1021.5, with the Court seeking his (and
15 his attorneys') fees and costs incurred as set forth in this
16 Paragraph.
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20 **4. Michael DiPirro's Release Of Dansk International**

21 **Designs, Ltd.** Michael DiPirro, by this Agreement, on behalf of
22 himself, his agents, representatives, attorneys, assigns and in the
23 interest of the general public, waives all rights to institute or
24 participate in, directly or indirectly, any form of legal action, and
25 releases all claims, liabilities, obligations, losses, costs,
26 expenses, fines and damages, against Dansk and its respective
27 distributors, customers, directors, officers, employees, parents,
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1 provisions of this Agreement, DiPirro and Dansk agree to use their
2 best efforts to respond to such comments or objections and to support
3 each of the terms of the Agreement, as well as to continue to seek
4 judicial approval of this Agreement. In this event, counsel to
5 DiPirro shall provide Dansk with and append to a supplemental
6 declaration in support of the Motion referred to in Paragraphs 3.1 and
7 3.2 above, a supplemental billing summary for additional fees and
8 costs incurred in association with responding to such objections or
9 comments. Dansk's liability for payment due under section 3.1 for
10 work performed by DiPirro or his counsel pursuant to this Paragraph
11 shall not exceed an additional \$2,500 (which shall be independent of
12 and not subject to the dollar amount limitation on additional fees set
13 forth in Paragraph 3.2 above).

16 **3.4** In the event the Consent Judgment is entered by
17 the trial court and an appeal is taken by a third party, Dansk shall
18 have the option to request that DiPirro oppose the appeal. In this
19 event, Dansk and DiPirro's counsel shall attempt to negotiate an
20 additional payment of fees for work DiPirro's counsel agrees to
21 perform in conjunction with the appeal within five (5) days of the
22 date on which the request is received by counsel to DiPirro. In the
23 event that Dansk does not request DiPirro counsel's assistance with
24 regard to an appeal, it shall have no additional liability with regard
25 to the payment of additional fees to DiPirro's counsel.

28 3.5. Dansk's payment of DiPirro's legal fees and

1 required to obtain judicial approval of this Agreement. Accordingly,
2 the parties agree to use their best efforts to file a *Joint Motion to*
3 *Approve the Agreement*, the first draft of which Dansk shall prepare,
4 within a reasonable period of time after execution of this Agreement
5 (i.e., not to exceed fourteen (14) days unless otherwise agreed to by
6 DiPirro's counsel based on unanticipated circumstances). Pursuant to
7 C.C.P. §1021.5, Dansk agrees to reimburse DiPirro and his counsel for
8 their reasonable fees and costs incurred in seeking judicial approval
9 of this Agreement, to the extent described in Paragraphs 3.2 through
10 3.5.
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13 **3.2** Concurrently with filing the Joint Motion

14 referred to in Paragraph 3.1 above, counsel to DiPirro shall describe
15 in its declaration in support of the Motion, for the amount of
16 additional fees and costs incurred in association with this matter
17 since the Effective Date, including fees and costs related to
18 preparation and filing of the Motion. If no opposition to (or
19 comments on) the Motion to approve (nor objection to or comments on
20 the terms of the Agreement) is filed or otherwise transmitted to
21 DiPirro or to Dansk by any third party, Dansk's liability for payment
22 due under section 3.1 for work performed securing approval of the
23 Consent Judgment in the trial court, shall not, in any event, exceed
24 \$3,650.
25

26
27 **3.3** In the event that any third party, including any

28 public enforcer, objects or otherwise comments to one or more

1 after the material terms of the agreement had been settled. Dansk
2 then expressed a desire to resolve the fee and cost issue shortly
3 after the other settlement terms had been finalized. The parties then
4 attempted to (and did) reach an accord on the compensation due to
5 DiPirro and his counsel under the private attorney general doctrine
6 codified at Code of Civil Procedure section 1021.5 for all work
7 performed through the Effective Date of the Agreement.
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9 Under the private attorney general doctrine codified at
10 Code of Civil Procedure section 1021.5, Dansk shall reimburse DiPirro
11 and his counsel for his fees and costs, incurred as a result of
12 investigating, bringing this matter to Dansk's attention, litigating
13 and negotiating a settlement in the public interest. Dansk shall pay
14 DiPirro and his counsel \$34,000 except as provided for in Sections 3.1
15 through 3.4 below, for all attorneys' fees, expert and investigation
16 fees, and litigation costs, within ten (10) calendar days of the
17 Effective Date. Payment should be made payable to "Sheffer & Chanler
18 LLP". If the Consent Judgment is not approved by the Court, DiPirro
19 and Sheffer & Chanler LLP will return all funds, with interest thereon
20 at the prevailing federal funds rate (currently set at 1.75% per
21 annum), within five (5) calendar days of notice of the Court's
22 decision.
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25 3.1 Additional Fees and Costs in Seeking Judicial

26 **Approval.** The parties acknowledge that, pursuant to recent
27 interpretations of Health & Safety Code §25249.7, a noticed motion is
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1 certified to perform the analytical method in question) to DiPirro
2 that: (1) it has achieved the criteria for Reformulated Products as
3 set forth in Paragraph 1.2 above with respect to those patterns of
4 Products it wishes to continue to offer for sale in the United States,
5 and (2) has ceased manufacturing and will permanently desist from
6 shipping any non-Reformulated patterns of Products to California; or
7 (B) the payments otherwise required by Paragraph 2.0, subsections (c)
8 and (d) shall be waived in their entirety if, within five (5) days of
9 the date that the first of such payments (i.e., the payment that would
10 otherwise be required under Paragraph 2.0(c)) would otherwise be due,
11 Dansk provides such written certification to DiPirro;; or (C) the
12 payment otherwise required by Paragraph 2.0, subsection (d) shall be
13 waived in its entirety if, within five (5) days of the date that such
14 payment would otherwise be due, Dansk provides such written
15 certification to DiPirro. The Parties agree that Dansk's potential
16 interest in and ability to develop and market Reformulated Products is
17 to be accounted for in this Paragraph and, since it is not a remedy
18 provided for by law, the absence of Dansk previously developing or
19 marketing Reformulated Product is not relevant to the establishment of
20 a penalty amount pursuant to Paragraph 2.0 above.

24 **3. Reimbursement of Attorneys' Fees And Costs.** The
25 parties acknowledge that DiPirro and his counsel offered to resolve
26 this dispute without reaching terms on the amount of fees and costs to
27 be reimbursed to them, thereby leaving this fee issue to be resolved

1 been no written certification provided to DiPirro by Dansk pursuant to
2 Paragraph 2.1; (c) another additional \$30,000 shall be paid within one
3 hundred (100) days of the Effective Date if there has been no written
4 certification provided to DiPirro by Dansk pursuant to Paragraph 2.1;
5 and (d) a final additional \$40,000 shall be paid within one hundred
6 eighty (180) days of the Effective Date if there has been no written
7 certification provided to DiPirro by Dansk pursuant to Paragraph 2.1.

9 The penalty payments specified above are, where applicable, to be
10 made payable to "Sheffer & Chanler LLP In Trust For Michael DiPirro".

11 Those penalty monies received shall be apportioned by DiPirro in
12 accordance with Health & Safety Code §25192, with 75% of these funds
13 remitted to the State of California's Department of Toxic Substances
14 Control.
15

16 **2.1 Reformulation Options.** The Parties hereby agree
17 that the total amount of civil penalties established in Paragraph 2.0
18 above shall be subject to the following reductions/waivers: (A) the
19 payments otherwise required by Paragraph 2.0, subsections (b), (c),
20 and (d) shall be waived in their entirety if, within five (5) days of
21 the date that the first of such payments (i.e., the payment that would
22 otherwise be required under Paragraph 2.0(b)) would otherwise be due,
23 Dansk provides written certification (including verifying laboratory
24 test results from an independent federal or state laboratory certified
25 to perform the analytical methods described in Paragraph 1.2 above or
26 from its own testing facilities in the United States if they are
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1 the Product or on the exterior Lip and Rim Area of the Product; or (b)
2 produce either a nondetectable test result or a test result no higher
3 than 1.0 micrograms (ug) of lead (depending on whether flame AAS or
4 graphite furnace AAS is applied for the analysis respectively, which
5 shall be at Dansk's sole option, a Ghost Wipe™ test applied on
6 painted portions of the surface of the Product, performed as outlined
7 in NIOSH method no. 9100) if the painted decoration is solely on the
8 exterior of the Product exclusive of the Lip and Rim Area, or a result
9 of 0.5 micrograms/milliliter (ug/ml) of lead or less (using ASTM
10 method C 927-93) if the painted decoration extends into the exterior
11 Lip and Rim Area or the interior (food contact surface) of the
12 Product. Dansk may employ any of the following analytical methods for
13 purposes of subsections (a) or (b) of this Paragraph: NIOSH methods
14 7082, 7105 or 7300; US EPA methods 6010, 6020, 7420, 7421, or 239.1;
15 SM 18th ED 3113B or 3111B or C; or ASTM method D3559. Products
16 satisfying the conditions of this Paragraph 1.2(a) or (b) are
17 hereinafter referred to as "Reformulated Products".
18
19
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21 **2.0 Payment Pursuant To Health & Safety Code §25249.7(b).**

22 Pursuant to Health & Safety Code §25249.7(b), Dansk shall pay \$100,000
23 in civil penalties. This amount shall be paid, subject to the
24 potential reduction specified in Paragraph 2.1 below and according to
25 the following schedule: (a) \$10,000 shall be paid within ten (10)
26 calendar days of the Effective Date; (b) an additional \$20,000 shall
27 be paid within forty-five (45) days of the Effective Date if there has
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1 through its own retail outlet stores located in the State of
2 California or that Dansk sells to retail stores located in the State
3 of California which are owned by others, only the following warning
4 statement shall be given:

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6 "WARNING: The exterior handpaint used on this product
7 contains lead, a chemical known to the State
8 of California to cause birth defects or
9 other reproductive harm. Wash hands after
10 handling to minimize exposure."

11 This warning statement shall be prominently placed by Dansk
12 on ~~or near~~ the Products or their packaging at the point of sale with
13 such conspicuousness, as compared with other words, statements,
14 designs or devices ~~in proximity of the location of the Products on the~~
15 ~~store shelf or at the cash register (by way of signage) or~~ on the
16 label (by way of adhesive sticker or as otherwise printed on the
17 label), as to render it likely to be read and understood by an
18 ordinary individual under customary conditions of purchase. The last
19 sentence of the warning required by this Paragraph may be omitted with
20 respect to any Products shipped to California within one year after
21 the Effective Date.

22 **1.2** The warnings required pursuant to Paragraphs 1.0
23 and 1.1(a) and (b) above shall not be required for Products which: (a)
24 utilize paints containing four one-hundredths of one percent (0.04%)
25 lead by weight or less (as measured by ASTM method E1645 applied to a
26 sample size of approximately 50-100 mg) and contain no painted
27 decoration within any part of the interior (food contact surface) of
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1 agrees that it will not knowingly sell any Products containing the
2 Listed Chemicals in the State of California unless such Products
3 comply with sections 1.1 or 1.2 below:

4 **1.1(a). Interim Warnings.** Dansk hereby represents
5 and warrants that, for all Products sold in its California retail
6 outlet stores since June 1, 2002, one of the following warning
7 statements has been given on or near the Products or their packaging
8 at the point of sale:

9
10 "WARNING: This product contains lead, a chemical known
11 to the State of California to cause birth
12 defects or other reproductive harm.";

13 or

14 "WARNING: The exterior handpaint used on this product
15 contains lead, a chemical known to the State
16 of California to cause birth defects or
17 other reproductive harm."

18 Dansk further represents and warrants that the distribution of the
19 Products in the State of California has principally been through its
20 own retail outlet stores since at least September 1, 2001 and that it
21 has used good faith efforts to sticker existing inventories of the
22 Products at other retail stores in California with one of the two
23 warnings set forth above.

24 **1.1(b). Warnings Beyond Interim Period.** The Interim
25 Warning program described in Paragraph 1.1(a) above shall continue for
26 a minimum of ninety (90) calendar days from the Effective Date.
27 Beginning with shipments thereafter, for all Products that Dansk sells
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1 enforcers with notice that Dansk was allegedly in violation of Health
2 & Safety Code §25249.6 for allegedly failing to warn purchasers that
3 certain products it sells in California expose users to one or more
4 Listed Chemicals; and

5
6 E. On April 2, 2002, Michael DiPirro filed a complaint
7 entitled Michael DiPirro v. Dansk International Designs, Ltd., et al.
8 in the San Francisco County Superior Court, naming Dansk as a
9 defendant and alleging violations of Business & Professions Code
10 §17200, Business & Professions Code § 17500, and Health & Safety Code
11 §25249.6 on behalf of individuals in California who allegedly have
12 been exposed to one or more Listed Chemicals contained in certain
13 products sold by Dansk the "Action"); and

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

22
23 **NOW THEREFORE, MICHAEL DIPIRRO AND DANSK INTERNATIONAL DESIGNS, LTD.**

24 **HEREBY STIPULATE AND AGREE AS FOLLOWS:**

25
26 1. **Product Warnings.** Dansk shall immediately begin to
27 provide warnings with regard to its sale of the Products in California
28 by providing the language set forth in sections 1.1(a) below. Dansk

1 ("Agreement" or "Consent Judgment") is entered into by and between
2 plaintiff, Michael DiPirro ("DiPirro") and defendant Dansk
3 International Designs, Ltd., a subsidiary of Lenox Incorporated as of
4 July 22, 2002 (the "Effective Date"). Dansk International Designs,
5 Ltd. and Lenox Incorporated are collectively referred to herein as
6 "Dansk." DiPirro and Dansk are collectively referred to herein as the
7 "Parties" and hereby agree to the following terms and conditions:
8

9 **WHEREAS:**

10 A. DiPirro is an individual residing in San Francisco,
11 California, who seeks to promote awareness of exposures to toxic
12 chemicals and improve human health by reducing or eliminating
13 hazardous substances contained in consumer and industrial products;
14

15 B. Dansk has distributed and sold certain patterns of
16 handpainted glassware products (the "Products") decorated on exterior
17 portions of the glass that lie below the top 20 millimeters of the
18 ware (i.e., below the exterior portion of the lip and rim area as
19 defined by American Society of Testing and Materials Standard Test
20 Method C927-80, hereinafter the "Lip and Rim Area") with paint that
21 contains lead (or lead compounds) (the "Listed Chemicals");
22

23 C. A list of the Products which are covered by this
24 Agreement is provided in Exhibit A; and

25 D. On December 31, 2001, Michael DiPirro first served
26 Dansk and other public enforcement agencies with a document entitled
27 "60-Day Notice of Violation" which provided Dansk and such public
28

1 Gregory M. Sheffer, State Bar No. 173124
Clifford A. Chanler, State Bar No. 135534
2 SHEFFER & CHANLER
3 ATTORNEYS AT LAW
4 4400 Keller Avenue, Suite 200
Oakland, CA 94605
Tel: (510) 577-0747

5 Attorneys for Plaintiff
6 MICHAEL DIPIRRO

7
8 Robert L. Falk, State Bar No. 142007
Aaron P. Avila, State Bar No. 211722
9 MORRISON & FOERSTER LLP
10 425 Market Street
San Francisco, CA 94105
11 Tel: (415) 268-6294

12 Attorneys for Defendant
13 DANSK INTERNATIONAL DESIGNS, LTD.

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15
16 SUPERIOR COURT OF THE STATE OF CALIFORNIA
17 IN AND FOR THE COUNTY OF SAN FRANCISCO
18

19 MICHAEL DIPIRRO,) No. 406220
20)
21 Plaintiff)
22 v.) STIPULATION AND [PROPOSED]
23) ORDER RE:
24) CONSENT JUDGMENT AS MODIFIED
DANSK INTERNATIONAL DESIGNS,) PURSUANT TO COMMENTS OBTAINED
25 LTD., a subsidiary of Lenox,) FROM THE OFFICE OF THE
26 Incorporated; and DOES 1 through) CALIFORNIA ATTORNEY GENERAL
1000,)
27)
28 Defendants.

29 This Stipulation and [Proposed] Order Re: Consent Judgment
30 STIPULATION AND [PROPOSED] ORDER
31 RE: CONSENT JUDGMENT