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FILED

MAR 09 2012

KIM TURNER
Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA
11 FOR THE COUNTY OF MARIN
12 UNLIMITED JURISDICTION

13 CENTER FOR ENVIRONMENTAL HEALTH,
14 Plaintiff,
15 vs.
16 BARNES & NOBLE, INC., et al.,
17 Defendants.

Case No. CIV-1103790

^{FD}
[PROPOSED] CONSENT JUDGMENT

18
19 **1. INTRODUCTION**

20 1.1 This Consent Judgment is entered into by the Center For Environmental Health, a
21 California non-profit corporation ("CEH") on the one hand, and Barnes & Noble, Inc., Barnes &
22 Noble Booksellers, Inc., and Miquel-Rius, USA Ltd. (collectively, "Defendants") on the other
23 hand, to settle certain claims asserted by CEH against Defendants as set forth in the operative
24 complaint in the matter entitled *Center for Environmental Health v. Barnes & Noble, Inc., et al.*,
25 Marin County Superior Court Case No. CIV-1103790 (the "Action").

26 1.2 On May 9, 2011, CEH provided a "Notice of Violation of Proposition 65" to the
27 California Attorney General, the District Attorneys of every county in California, the City
28 Attorneys of every California city with a population greater than 750,000, and to Defendants

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1 regarding the presence of lead in journals and planners (“Covered Products”).

2 1.3 On July 29, 2011, CEH filed the complaint against Defendants in the Action.

3 1.4 Each Defendant is a corporation that employs or has employed during the relevant
4 time period 10 or more persons, and which manufactures, distributes and/or sells Covered
5 Products in the State of California.

6 1.5 For purposes of this Consent Judgment only, CEH and Defendants (the “Parties”)
7 stipulate that this Court has jurisdiction over the allegations of violations contained in the
8 Complaint and personal jurisdiction over Defendants as to the acts alleged in the Complaint, that
9 venue is proper in the County of Marin, and that this Court has jurisdiction to enter this Consent
10 Judgment as a full and final resolution of all claims which were or could have been raised in the
11 Complaint based on the facts alleged therein with respect to Covered Products manufactured,
12 distributed, and/or sold by Defendants.

13 1.6 CEH and Defendants enter into this Consent Judgment as a full and final
14 settlement of all claims that were raised in the Action, or which could have been raised in the
15 Action, arising out of the facts or conduct related to Defendants alleged therein. By execution of
16 this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any facts
17 or conclusions of law including, but not limited to, any facts or conclusions of law suggesting or
18 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable
19 requirements. Nothing in this Consent Judgment is or shall be construed as an admission by the
20 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
21 the Consent Judgment constitute or be construed as an admission by the Parties of any fact,
22 conclusion of law, issue of law, or violation of law. Defendants deny the material, factual and
23 legal allegations in CEH’s Complaint and expressly deny any wrong doing whatsoever. Nothing
24 in this Consent Judgment shall prejudice, waive or impair any right, remedy, argument or
25 defense the Parties may have in this or any other pending or future legal proceedings. This
26 Consent Judgment is the product of negotiation and compromise and is accepted by the Parties
27 solely for purposes of settling, compromising, and resolving issues disputed in this action.
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1 **2. INJUNCTIVE RELIEF**

2 2.1 **Reformulation of Covered Products.** As of the April 30, 2012 (the “Effective
3 Date”), Defendants shall not manufacture, ship, sell or offer for sale any Covered Product unless
4 such Covered Product complies with the following Lead Limits:

5 2.1.1 “Paint or other Surface Coatings” as that term is defined in 16 C.F.R. §
6 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million (“ppm”), as
7 measured by CPSC-CH-E1002-08.

8 2.1.2 All other materials: no more than .01 percent Lead by weight (100 ppm),
9 as measured by CPSC-CH-E1002-08.

10 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
11 Defendants shall cease shipping the Miquelrius Soft Bound Medium Journal in Red, SKU No. 9-
12 780641-026904, as identified in CEH’s pre-suit Notice of Violation to Defendants (the “Recall
13 Covered Products”), to retail stores in California, and, to the extent not already accomplished
14 prior to the execution of this Consent Judgment, Defendants shall recall the Recall Covered
15 Products from any retail stores in California. Defendants shall keep and make available to CEH
16 for inspection and copying records and correspondence regarding the recall of the Recall
17 Covered Products. If there is a dispute over the corrective action, the Parties shall meet and
18 confer before seeking any remedy in court.

19 2.3 **Covered Products In The Stream of Commerce.** Any Covered Products that
20 have been manufactured, distributed, shipped, or sold by Miquel-Rius, USA Ltd. prior to the
21 Effective Date, shall not be subject to the requirements of Section 2.1.

22 **3. ENFORCEMENT**

23 3.1 **Enforcement Procedures.** Prior to bringing any motion or order to show cause
24 to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
25 violating party forty-five (45) days advanced written notice of the alleged violation. The Parties
26 shall meet and confer during such forty-five (45) day period in an effort to try to reach agreement
27 on an appropriate cure for the alleged violation. After such forty-five (45) day period, the Party
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1 seeking to enforce may, by new action, motion or order to show cause before the Superior Court
2 of Marin, seek to enforce the terms and conditions contained in this Consent Judgment.

3 **4. PAYMENTS**

4 4.1 **Payments From Defendants.** Within five (5) days of the entry of this Consent
5 Judgment, Defendants shall pay the total sum of \$40,000 as a settlement payment.

6 4.2 **Allocation of Payments.** The total settlement amount shall be paid in three
7 separate checks delivered to the offices of the Lexington Law Group (Attn: Howard Hirsch), 503
8 Divisadero Street, San Francisco, California 94117 and made payable and allocated as follows:

9 4.2.1 The sum of \$4,000 shall be paid as a penalty pursuant to Health & Safety
10 Code §25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety
11 Code §25249.12. The penalty check shall be made payable to the Center For Environmental
12 Health.

13 4.2.2 The sum of \$11,500 shall be paid to CEH in lieu of penalty pursuant to
14 Health & Safety Code §25249.7(b), and California Code of Regulations, Title 11, §3203(b).
15 CEH will use such funds to continue its work educating and protecting people from exposures to
16 toxic chemicals, including heavy metals. CEH may also use a portion of such funds to monitor
17 compliance with the reformulation requirements of this and other similar Consent Judgments and
18 to purchase and test Covered Products to confirm compliance with such reformulation
19 requirements. In addition, as part of its Community Environmental Action and Justice Fund,
20 CEH will use four percent of such funds to award grants to grassroots environmental justice
21 groups working to educate and protect people from exposures to toxic chemicals. The method of
22 selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The
23 payment in lieu of penalty check shall be made payable to the Center for Environmental Health.
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25 4.2.3 The sum of \$24,500 shall be paid as reimbursement of reasonable
26 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
27 payable to the Lexington Law Group.
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1 **5. MODIFICATION AND DISPUTE RESOLUTION**

2 5.1 **Modification.** This Consent Judgment may be modified from time to time by
3 express written agreement of the Parties and with the approval of the Court.

4 **6. CLAIMS COVERED AND RELEASE**

5 6.1 This Consent Judgment is a full, final, and binding resolution between CEH and
6 Defendants and Defendants’ parents, shareholders, divisions, subdivisions, subsidiaries, partners,
7 sister companies and their successors and assigns (“Defendant Releasees”), and all to whom they
8 distribute or sell Covered Products including, but not limited to, distributors, wholesalers,
9 customers, retailers, franchisees, cooperative members, and licensees (“Downstream Defendant
10 Releasees”), of any violation of Proposition 65 or any other statutory or common law claims that
11 have been or could have been asserted in the public interest against Defendants, Defendant
12 Releasees, and Downstream Defendant Releasees, regarding the failure to warn about exposure
13 to lead arising in connection with Covered Products manufactured, distributed, or sold by
14 Defendants prior to the Effective Date.

15 6.2 CEH, for itself and acting on behalf of the public interest pursuant to Health &
16 Safety Code §25249.7(d), releases, waives, and forever discharges any and all claims against
17 Defendants, Defendant Releasees, and Downstream Defendant Releasees arising from any
18 violation of Proposition 65 or any other statutory or common law claims that have been or could
19 have been asserted in the public interest regarding the failure to warn about exposure to lead
20 arising in connection with Covered Products manufactured, distributed or sold by Defendants
21 prior to the Effective Date.

22 6.3 Compliance with the terms of this Consent Judgment by Defendants and the
23 Defendant Releasees shall constitute compliance with Proposition 65 by Defendants, the
24 Defendant Releasees and their Downstream Defendant Releasees with respect to any alleged
25 failure to warn about lead in Covered Products manufactured, distributed or sold by Defendants
26 after the Effective Date.
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1 **7. PROVISION OF NOTICE**

2 7.1 When any Party is entitled to receive any notice under this Consent Judgment, the
3 notice shall be sent by first class and electronic mail as follows:

4 7.1.1 **Notices to Defendants.** The person for Defendants to receive Notices
5 pursuant to this Consent Judgment shall be:

6 For Barnes & Noble, Inc. and Barnes & Noble Booksellers, Inc.:

7 Adam J. Thurston
8 Drinker Biddle LLP
9 1800 Century Park East, Suite 1400
10 Los Angeles, CA 90067
11 adam.thurston@dbr.com

12 And

13 Barnes & Noble, Inc.
14 122 Fifth Avenue
15 New York, NY 10011
16 Attn: Legal Department

17 For Miquel-Rius, USA Ltd.:

18 John F. Lushis, Jr.
19 Tallman Hudders & Sorrentino
20 The Paragon Centre, Suite 300
21 1611 Pond Road
22 Allentown, PA 18104
23 jlushis@thslaw.com

24 7.1.2 **Notices to Plaintiff.** The person for CEH to receive Notices pursuant to
25 this Consent Judgment shall be:

26 Howard Hirsch
27 Lexington Law Group
28 503 Divisadero Street
 San Francisco, CA 94117
 hhirsch@lexlawgroup.com

 7.2 Any Party may modify the person and address to whom the notice is to be sent by
 sending the other Party notice by first class and electronic mail.

1 **8. COURT APPROVAL**

2 8.1 This Consent Judgment shall become effective on approval by the Court, provided
3 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
4 Defendants shall support approval of such Motion.

5 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
6 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
7 purpose.

8 **9. GOVERNING LAW AND CONSTRUCTION**

9 9.1 The terms of this Consent Judgment shall be governed by the laws of the State of
10 California.

11 **10. ENTIRE AGREEMENT**

12 10.1 This Consent Judgment contains the sole and entire agreement and understanding
13 of the Parties with respect to the entire subject matter hereof, and any and all prior discussions,
14 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein
15 and therein. There are no warranties, representations, or other agreements between the Parties
16 except as expressly set forth herein. No representations, oral or otherwise, express or implied,
17 other than those specifically referred to in this Consent Judgment have been made by any Party
18 hereto. No other agreements not specifically contained or referenced herein, oral or otherwise,
19 shall be deemed to exist or to bind any of the Parties hereto. Any agreements specifically
20 contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind any of the
21 Parties hereto only to the extent that they are expressly incorporated herein. No
22 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
23 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
24 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
25 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

26 **11. RETENTION OF JURISDICTION**

27 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
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Consent Judgment.

12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

12.1 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.


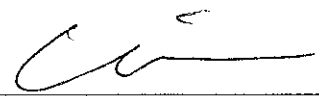
13. NO EFFECT ON OTHER SETTLEMENTS

13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any claim against another entity on terms that are different than those contained in this Consent Judgment.

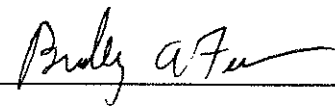
14. EXECUTION IN COUNTERPARTS

14.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

IT IS SO STIPULATED:

<p>Dated: <u>Nov 30</u>, 2011</p>	<p>CENTER FOR ENVIRONMENTAL HEALTH</p> <p></p> <hr/> <p>Printed Name</p> <p></p> <hr/> <p>Title</p>
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Dated: <u>November 23</u> , 2011	BARNES & NOBLE, INC. AND BARNES & NOBLE BOOKSELLERS, INC.  _____ Printed Name <u>BRADLEY A FEUER</u> _____ Title <u>VICEPRESIDENT, ASSISTANT GENERAL COUNSEL</u>
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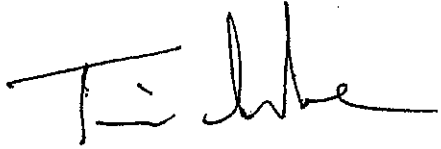
Dated: _____, 2011	MIQUEL-RIUS USA, LTD. _____ Printed Name _____ Title
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**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Dated: _____
Judge of the Superior Court of the State of
California

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Dated: _____, 2011	BARNES & NOBLE, INC. AND BARNES & NOBLE BOOKSELLERS, INC. <hr/> Printed Name <hr/> Title
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Dated: <u>Nov 22</u> , 2011 	MIQUEL-RIUS USA, LTD. <u>Tim Grube</u> Printed Name <u>General Manager</u> Title
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**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

FAYE D'OPAL

Dated: **MAR 09 2012**

Judge of the Superior Court of the State of California

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