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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF MARIN  
UNLIMITED JURISDICTION

CENTER FOR ENVIRONMENTAL HEALTH,	)	Case No. CIV-1103790
Plaintiff,	)	
vs.	)	[PROPOSED] CONSENT JUDGMENT
BARNES & NOBLE, INC., <i>et al.</i> ,	)	
Defendants.	)	

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**1. INTRODUCTION**

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

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

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](http://www.ceh.org/justicefund). The  
23 payment in lieu of penalty check shall be made payable to the Center for Environmental Health.

24 4.2.3 The sum of \$24,500 shall be paid as reimbursement of reasonable  
25 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made  
26 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.

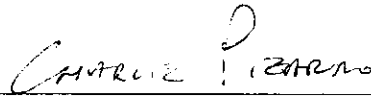
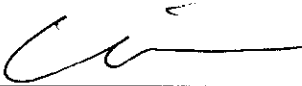
**13. NO EFFECT ON OTHER SETTLEMENTS**

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**

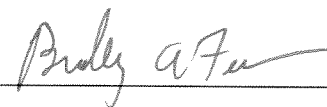
14.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

IT IS SO STIPULATED:

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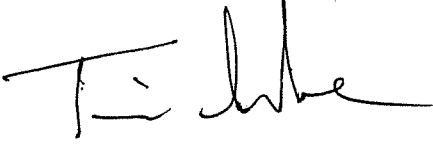
Dated: _____, 2011	<b>MIQUEL-RIUS USA, LTD.</b>  Printed Name  Title
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**IT IS SO ORDERED, ADJUDGED,  
AND DECREED**

Dated: \_\_\_\_\_  
Judge of the Superior Court of the State of California

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

Dated: \_\_\_\_\_  
 Judge of the Superior Court of the State of  
 California