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SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Parties

This Settlement Agreement is entered into by and between Dennis Johnson ("Johnson") and Michaels Stores, Inc. and its related corporate entities (collectively, "Michaels"), with Johnson and Michaels each individually referred to as a "Party" and collectively as the "Parties." Johnson is an individual residing in the State of California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances used in consumer products. Michaels is a business with ten (10) or more employees that, among other places, operates retail stores in California. Johnson hereby alleges that Michaels is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code section 25249.6 *et seq.* ("Proposition 65").

1.2 General Allegations

Johnson more specifically alleges that Michaels manufactures, imports, distributes, sells, and/or offers for sale in California, certain ceramic trays with exterior decorations containing lead and lead compounds ("Lead"). Lead is listed pursuant to Proposition 65 as a chemical known to cause reproductive harm and cancer. Johnson alleges that there was a failure to provide the health hazard warning required by Proposition 65 for exposures to Lead.

1.3 Product Description

The products covered by this Settlement Agreement are ceramic trays that are marked as being "not for food use" and which have been manufactured, imported, and distributed for sale in California by Michaels including, but not limited to, the *Bead Landing Ceramic Tray SKU# 1 91518 60094 0* (the "Bead Landing Tray"), hereinafter referred to collectively as "Products".

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1.4 Notice of Violation

On April 12, 2019, Johnson served Michaels and the requisite public enforcement agencies with a 60-Day Notice of Violation ("Notice"), alleging that Michaels violated Proposition 65 by failing to warn its customers and consumers in California of the health hazards associated with exposures to Lead from the Products. Michaels subsequently entered into negotiations with Johnson to resolve Johnson's claims concerning the Products as set forth against Michaels in the Notice. No public enforcer has commenced and is diligently prosecuting the allegations set forth in the Notice.

1.5 Prior Settlement

On May 5, 2006, Michaels entered a "Stipulation for Entry of Judgment" in the *Brimer v. The Boelter Companies, San Francisco Case No. CGC-05-440811* that covered, among other products, "Ceramicware Non-Food/Beverage Products" with colored artwork, designs and/or marking on the exterior surface containing Lead. The *Boelter* judgment remains in full force and effect.

1.5 No Admission

Michaels denies the material, factual, and legal allegations contained in the Notice and maintains that all the products that it has sold and distributed 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 Michaels 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 Michaels of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied. This Section shall not, however, diminish or otherwise affect Michaels's obligations, responsibilities, and duties under this Settlement Agreement.

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1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean June 21, 2019.

2. INJUNCTIVE RELIEF: REFORMULATION / WARNING

As of the Effective Date, Michaels represents that it has discontinued the manufacture, importation and/or distribution of the Bead Landing Ceramic Tray. If Michaels re-orders the Bead Landing Ceramic Tray, prior to distributing it for sale in California, Michaels shall either comply with the injunctive relief set forth in the *Boelter* Judgment or ensure that such units of the Bead Landing ceramic Tray bear a clear and reasonable warning which shall consist of either the "Warning" or "Alternative Warning" appearing below.

2.1 Warning:

⚠ **WARNING**: This product can expose you to chemicals including lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

2.2 Alternative Warning:

⚠ **WARNING**: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.

A "Warning" or "Alternative Warning" must have the word "**WARNING:**" appear in all capital letters and in bold font, followed by a colon. The warning symbol to the left of the word "**WARNING:**" must be a black exclamation point in a yellow equilateral triangle with a black outline, except that if the sign or label for the Products does not use the color yellow, the symbol may be in black and white. The symbol must be in a size no smaller than the height of the word "**WARNING:**". The warning shall be affixed to or printed on the Products' packaging or labeling and displayed with such conspicuousness,

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as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use.

With respect to other Products falling within the "Ceramicware Non-Food/Beverage Products", as defined in the *Boelter* Judgment, Michaels shall continue to be bound by the *Boelter* Judgment, to which it is a party.

2.3 The Parties agree and intend that compliance with the injunctive terms of this Settlement Agreement shall constitute compliance with Proposition 65 with respect to exposures to Lead from the Products.

2.5 Based on the civil penalties to be paid pursuant to Section 3.1 below, Products manufactured, imported, or acquired for sale in California by Michaels before the Effective Date shall be exempt from the requirements of Sections 2.1 and 2.2 and may be sold through as presently packaged and labeled.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty Payment

Pursuant to Health and Safety Code section 25249.7(b)(2), and in settlement of all claims alleged in the Notice or referred to in this Settlement Agreement, Michaels agrees to pay $500 in civil penalties no later than the Effective Date. The penalty payment will be allocated in accordance with California Health and Safety Code section 25249.12(c)(1) & (d), with 75% of the penalty amount remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty amount paid to Johnson and delivered to the address in Section 3.3 herein. Michaels will provide its payment, no later than the Effective Date, in two checks as follows: (1) "OEHHA" in the amount of $375; and (2) "Dennis Johnson" in the amount of $125.

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3.2 Attorneys' Fees and Costs

The Parties acknowledge that Johnson and his counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to be resolved after the material terms of the agreement had been settled. Shortly after the other settlement terms had been reached, Michaels expressed a desire to resolve Johnson's fees and costs. The Parties reached an accord on the compensation due to Johnson's counsel under general contract principles and the private attorney general doctrine codified at Code of Civil Procedure section 1021.5 for all work performed in this matter. Under these legal principles, no later than the Effective Date, Michaels agrees to pay $12,500, in the form of a check made payable to "Voorhees & Bailey, LLP," for all fees and costs incurred investigating, bringing this matter to the attention of Michaels, and negotiating a settlement.

3.3 Payment Address

All payments under this Settlement Agreement shall be delivered to the following address:

Voorhees & Bailey, LLP
990 Amarillo Avenue
Palo Alto, CA 94303

4. CLAIMS COVERED AND RELEASED

4.1 Johnson's Release of Proposition 65 Claims

Johnson, in his individual capacity only, releases Michaels, its directors, officers, agents employees, attorneys, and each entity to whom Michaels directly or indirectly distribute or sell Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including but not limited to Michaels), franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for violations of Proposition 65 based on unwarned exposures to Lead in the Products as manufactured, imported, or otherwise acquired by Michaels prior to the Effective Date.

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This release shall not extend upstream to any entity that manufactured or otherwise supplied the Products to Michaels.

4.2 Johnson's Individual Release of Claims

Johnson, in his individual capacity only, provides a release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Johnson of any nature, character, or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to Proposition 65-listed chemicals in the Products manufactured, imported, or otherwise acquired by Michaels prior to the Effective Date. Nothing in this Section affects Johnson's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve the Products. This release shall not extend upstream to any entity that manufactured or otherwise supplied the Products to Michaels.

4.3 Michaels's Release of Johnson

Michaels, on its own behalf, and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Johnson and his attorneys and other representatives, for any and all actions taken or statements made by Johnson and his attorneys and other representatives, whether in the course of investigating claims, seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

5. SEVERABILITY

If, subsequent to the execution of this Settlement Agreement, any provision of this Settlement Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions 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 and apply within the State of California. In the event that Proposition 65 is

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repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Michaels may provide written notice to Johnson of any asserted change in the law and shall have no further injunctive obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Products are so affected.

7. NOTICE

Unless specified herein, all correspondence and notice required to be provided pursuant to this Settlement Agreement shall be in writing and sent by: (a) personal delivery; (b) first-class, registered or certified mail, return receipt requested; or (c) a recognized overnight courier on any Party by the other at the following addresses:

For Michaels:

General Counsel
Michaels Stores, Inc.
8000 Bent Branch Drive
Irving, TX 75063

and

Robert L. Falk
Morrison & Foerster LLP
425 Market Street, 32nd Floor
San Francisco, CA 94105-2482

For Johnson:

Voorhees & Bailey, LLP
Proposition 65 Coordinator
990 Amarillo Avenue
Palo Alto, CA 94303

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

8. COUNTERPARTS; FACSIMILE SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or portable document format (PDF) signature, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

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

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

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10. MODIFICATION

This Settlement Agreement may be modified only by 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, understand, and agreed to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

Dated: June 10, 2019

By: _____
DENNIS JOHNSON

AGREED TO:

Dated:

By: _____
DocuSigned by:
9B0BA90D64D74C2...
Name: Navin Rao
Title: VP-AGC & CCO
MICHAELS STORES, INC.