

SETTLEMENT AGREEMENT

1. **INTRODUCTION**

1.1. **Consumer Protection Group, LLC and Michaels Stores, Inc.**

This Settlement Agreement is entered into by and between Consumer Protection Group, LLC ("CPG"), on the one hand, and Michaels Stores, Inc. ("Michaels"), on the other hand, with CPG and Michaels collectively referred to as the "Parties."

1.2. **General Allegations**

CPG alleges that Michaels manufactured and distributed and offered for sale in the State of California shaker dashboards and fashion accessories containing Di(2-ethylhexyl)phthalate ("DEHP"), including UPC Nos. 9151854496 (a shaker dashboard), 191518582987 (a coin purse) and 886946952135 (an aluminum crochet hook set carrying case), and that such sales have not included warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* ("Proposition 65"). California has identified and listed DEHP under Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3. **Product Description**

The products that are covered by this Settlement Agreement are defined as shaker dashboards, coin purses, and aluminum hook set carrying cases that Michaels has, directly or via another retailer, sold, offered for sale or distributed in California and that contain DEHP. All such items shall be referred to herein as the "Products."

1.4. **Notices of Violation**

On December 28, 2018, August 12, 2019, and August 22, 2019, CPG served Michaels and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf

of the People of the State of California with documents entitled "60-Day Notice of Violation" (AG Nos. 2018-022336, 2019-01526, and 2019-01625, hereinafter, "Notices") that provided Michaels and such public enforcers with notice that Michaels was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn consumers and customers that the Products exposed users in California to DEHP. 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

The Parties enter into this Settlement Agreement to settle disputed claims between them as set forth herein and in the Notices concerning Michaels's compliance with Proposition 65. Specifically, Michaels denies the material factual and legal allegations contained in CPG's Notices and maintains that all products that it has manufactured for sale and distribution in California, including the Products, have been and are in compliance with Proposition 65 or any other statutory, regulatory, common law or equitable doctrine. Nothing in this Settlement Agreement shall be construed as an admission by Michaels of any fact, finding, 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 by Michaels. However, nothing in this section shall diminish or otherwise affect the obligations, responsibilities, and duties of Michaels under this Settlement Agreement.

1.6. Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this Settlement Agreement is fully executed.

2. INJUNCTIVE RELIEF: REFORMULATION AND WARNINGS

As of the Effective Date, Michaels shall manufacture, import, or otherwise source for sale in California only Reformulated Products, as defined pursuant to Section 2.1 below, unless such Products are labeled with a clear and reasonable Proposition 65 warning pursuant to Section 2.2 below.

2.1. Reformulation Standard

“Reformulated Products” are defined as those Products containing DEHP in concentrations less than 0.1 percent (1,000 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for the purpose of determining the DEHP content in a solid substance. The Parties also agree that the same 1,000 ppm concentration shall apply as a Proposition 65 warning threshold for each of the following additional chemicals in the Products: DINP, DDP, BBP, DIDP, and DnHP.

2.2. Warning Language

Where the Reformulation Standard in Section 2.1 has not been met, Michaels shall provide Proposition 65 warnings on the Product’s label as follows:

- (a) Michaels may use either of the following warning statements in full compliance with this Section:

- (1) **WARNING:** This product can expose you to chemicals including Di (2-ethylhexyl) phthalate (DEHP), which are known to the State of California to cause cancer, birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

(2) **WARNING: Cancer and Reproductive Harm –**

www.P65Warnings.ca.gov.

(b) If Michaels uses either of the above warning statements to effectuate its compliance, it shall also include a symbol consisting of a black exclamation point in a yellow equilateral triangle with a bold black outline. Where the label is not printed using the color yellow, the symbol may be printed in black and white. The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height of the word “WARNING.”

(c) Products distributed by Michaels prior to the Effective Date shall be deemed exempted from the requirements of this Section 2 and shall be permitted to be sold through as previously manufactured, packaged and labeled. In the event CPG identifies Products sold by Michaels in California in the future which have not been reformulated in accordance with Sections 2.1 and for which warnings are required but have not been given pursuant to Sections 2.2, CPG shall promptly notify Michaels in writing of the facts giving rise to such allegations (“Notice of Default”). In the event that Michaels notifies CPG within sixty (60) days of receiving the Notice of Default that it has implemented such measures as are necessary to correct the alleged situation (“Notice of a Cure”), CPG shall take no further action with respect to such alleged violation.

3. PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)

In settlement of all the claims referred to in this Settlement Agreement, Michaels shall pay a total of \$8,000 in civil penalties in accordance with this Section and Section 5 below. The penalty payment will be allocated in accordance with California Health & Safety Code section

25249.12(c)(1) & (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 CPG. CPG's counsel shall deliver OEHHA's portion of civil penalties paid under this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

Michaels shall reimburse CPG's counsel for fees and costs, incurred as a result of investigating and bringing these matters to Michaels' attention. Michaels shall pay CPG's counsel \$72,000 for all attorneys' fees, expert and investigation fees, and related costs associated with these matters and the Notices.

5. PAYMENT INFORMATION

Within 10 days following the Effective Date, Michaels shall make a total payment of \$80,000 for the combined amount of civil penalties and attorney's fees/costs required by this agreement by check, ACH or wire transfer to Plaintiff's counsel Blackstone Law APC:

Bank: First Republic Bank
Routing No.: 321081669
Account No.: 80006597266
Beneficiary: Blackstone Law APC IOLTA

Other than this payment, each side is to bear its own attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

6.1. Release of Michaels, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3 and 4 above, CPG, on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Products or Notices, 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) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against (a) Michaels, (b) each of Michaels' distributors, wholesalers, vendors, licensors, licensees, auctioneers, retailers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users, and (c) Michaels' parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). CPG further agrees that it will not proceed with Claims against Michaels based on 60-day notices that have been filed pursuant to Proposition 65 prior to the Effective Date.

CPG also, in its capacity, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/ or assignees and not in its representative capacity, provides a general 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 any nature, character or kind, known or unknown, suspected or unsuspected, against Michaels and the Releasees with respect to the subject Products (as defined in Section 1.3 above). In this regard, CPG acknowledges that it is familiar with California Civil Code section 1542, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

6.2. Michaels's Release of CPG

Michaels waives any and all claims against CPG, its attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by CPG and its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it with respect to the Products or Notices. Michaels represents and warrants that it will not proceed with any other claims against CPG based on facts within its knowledge at this time.

7. 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 repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Products, then Michaels shall have no further obligations pursuant to this Settlement Agreement but shall have no recourse to claw back payments already made.

8. NOTICES

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

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

with a copy to:

Robert Falk, Esq.
William Tarantino, Esq.
Robin Stafford, Esq.
Morrison & Foerster LLP
425 Market St.
32nd Floor
San Francisco, CA 94105

For CPG: Jonathan Genish, Esq.
Blackstone Law APC
8383 Wilshire Blvd., Ste 745
Beverly Hills, CA 90211

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.

9. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

CPG agrees to comply with the reporting form requirements referenced in California Health & Safety Code § 25249.7(f).

11. ENTIRE AGREEMENT



This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

12. MODIFICATION

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

13. 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.

<p style="text-align: center;">AGREED TO:</p> <p>Date: March 26, 2020</p> <p>By:  For Consumer Protection Group, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>4/1/2020</u>, 2020</p> <p>By:  For Michaels Stores, Inc.</p>
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