

Jonathan M. Genish (SBN 259031)
jgenish@blackstonepc.com
BLACKSTONE LAW, APC
8383 Wilshire Blvd., Suite 745
Beverly Hills, California 90211
Telephone: (310) 622-4278
Facsimile: (855) 786-6356

Attorneys for Plaintiff,
Consumer Protection Group, LLC

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF LOS ANGELES

CONSUMER PROTECTION GROUP, LLC,
IN THE PUBLIC INTEREST,

PLAINTIFF,

V.

MICHAELS STORES PROCUREMENT
COMPANY, INC;
and DOES 1-50

DEFENDANTS.

CASE NO. 23STCV23496

[PROPOSED] CONSENT JUDGMENT

Health & Safety Code § 25249.5 *et seq.*

Dept. 72

Judge: Joseph M. Lipner

Complaint filed: September 27, 2023

1. INTRODUCTION

1.1 Parties

This Consent Judgment is entered into by and between Plaintiff Consumer Protection Group, LLC (“CPG” or “Plaintiff”) acting on behalf of itself and in the interest of the public, and Defendant Michaels Stores Procurement Company, Inc (“Michaels” or “Defendant”), with each referred to as a “Party” and collectively referred to as “Parties.”

1.2 Michaels and Products

Michaels is a Texas corporation that is doing business at all times in California and employs ten (10) or more persons. CPG alleges that Michaels manufactured, caused to be manufactured, sold, or distributed a consumer product — Artist Loft Brush Set and Wreath Hanger Suction Cup (referred to hereinafter as “Covered Products”). For purposes of this Consent Judgment, Michaels is deemed a person in the course of doing business in California and subject to the provisions of the Safe

1 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 et
2 seq. (“Proposition 65”). The Covered Products are limited only to those sold or supplied by
3 Defendant.

4 **1.3 Listed Chemicals.**

5 Di(2-ethylhexyl) phthalate (“DEHP”) has been listed by the State of California as a chemical
6 known to cause cancer, developmental toxicity, and male reproductive toxicity.

7 **1.4 Notice of Violation.**

8 On or about May 16, 2023, Plaintiff gave notices of alleged violations of Health and Safety
9 Code section 25249.6 (“Notices”), concerning consumer product exposures, subject to a private
10 action to Michaels and to the California Attorney General, County District Attorneys, and City
11 Attorneys for each County containing a population of at least 750,000 people in whose jurisdiction
12 the violations allegedly occurred, concerning the Covered Products containing DEHP.

13 **1.5 Complaint.**

14 On September 27, 2023, CPG filed a Complaint for civil penalties and injunctive relief titled,
15 Consumer Protection Group LLC v. Michael Stores Procurement, Inc., LASC Case No.
16 23STCV23496 relating to the Wreath Hanger Suction Cup (“Suction Cup Complaint,”. In the First
17 Cause of Action of the Suction Cup Complaint, CPG alleges, among other things, that Defendant
18 violated Proposition 65 by failing to give clear and reasonable warnings of exposure to DEHP arising
19 from the Suction Cup.

20 On June 10, 2024, CPG filed a Complaint for civil penalties and injunctive relief titled,
21 Consumer Protection Group LLC v. Michael Stores Procurement, Inc., LASC Case No.
22 24STCV14515 alleging Proposition 65 violations concerning an Artist Loft Brush Set – Storage Case
23 (“Brush Set Complaint”). In the First Cause of Action, CPG alleges, among other things, that
24 Defendant violated Proposition 65 by failing to give clear and reasonable warnings of exposure to
25 DEHP arising from the Brush Set.

26 The Parties agree that this consent judgment will resolve the claims in both the Suction Cup
27 Complaint and the Brush Set Complaint and that Plaintiff will dismiss the Brush Set Complaint
28 following entry of this [Proposed] Consent Judgment and receipt of the payments due hereunder.

1 **1.6 Consent to Jurisdiction.**

2 For purposes of this Consent Judgment, the Parties stipulate that this Court has jurisdiction
3 over the allegations of violations contained in the Notices and Complaints and personal jurisdiction
4 over Defendant as to the acts alleged in the Complaints, that venue is proper in the County of Los
5 Angeles and that this Court has jurisdiction to enter this Consent Judgment as a full and final
6 settlement and resolution of the allegations contained in the Complaints and of all claims that were
7 or could have been raised by any person or entity based in whole or in part, directly or indirectly, on
8 the facts alleged therein or arising therefrom or related thereto.

9 **1.7 No Admission.**

10 This Consent Judgment resolves claims that are denied and disputed by Michaels. The Parties
11 enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between
12 the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment shall
13 be construed as an admission by the Parties of any material allegation of the Notices or the
14 Complaints, any fact, conclusion of law, issue of law or violation of law, including without limitation,
15 any admission concerning any alleged violation of Proposition 65 or any other statutory, regulatory,
16 common law, or equitable doctrine. Nothing in this Consent Judgment, nor compliance with its terms,
17 shall constitute or be construed as an admission by the Parties, or give rise to any inference, of any
18 fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by
19 Defendant, their officers, directors, employees, or parent, subsidiary or affiliated corporations, or be
20 offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court,
21 agency, or forum. Furthermore, nothing in this Consent Judgment shall prejudice, waive or impair
22 any right, remedy, argument, or defense the Parties may have in any other or future legal proceeding,
23 except as expressly provided in this Consent Judgment.


24 **1.8** The “Effective Date” is the date that this Consent Judgment is approved and entered
25 by the Court.

1 **2. INJUNCTIVE RELIEF**

2 **2.1** As of the Effective Date, Defendant shall cease selling, offering for sale in California,
3 or distributing for sale in California, unless the Covered Product contains no more than 1000 parts
4 per million (ppm) of DEHP or contains a warning as described in Section 2.3.

5 **2.2** Covered Products manufactured and in the stream of commerce on or prior to the
6 Effective Date irrespective of their sale date shall be exempted from the requirements in section 2.1.

7 **2.3** For any Covered Product requiring a warning as of the Effective Date, Defendant must
8 place a Proposition 65 compliant warning on the packaging. Any warning provided pursuant to this
9 section shall be affixed to the packaging of, or directly on, the Covered Product, and be prominently
10 placed with such conspicuousness as compared with other words, statements, designs, or devices as
11 to render it likely to be read and understood by an ordinary individual under customary conditions
12 before purchase or use. The pictogram shall be in yellow with a black exclamation mark; provided
13 the pictogram may be in white instead of yellow if the Covered Product label does not contain the
14 color yellow. The following warning is deemed to comply with Proposition 65:

15
16  **[CALIFORNIA PROP. 65] WARNING:** This product can expose you to chemicals
17 including Di (2-ethylhexyl) phthalate (DEHP), which is [are] known to the State of
18 California to cause cancer, and birth defects or other reproductive harm. For more
19 information go to www.P65Warnings.ca.gov.

20
21 Or

22  **CALIFORNIA WARNING:** Can expose you to Di (2-ethylhexyl) phthalate (DEHP), a
23 carcinogen and reproductive toxicant www.P65Warnings.ca.gov

24 The following warning statement may be used on Products manufactured and labeled prior
25 to January 1, 2028:

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

27 The warning shall be accompanied by a symbol consisting of a black exclamation point in a
28 yellow equilateral triangle with a black outline. Where the label, labeling, package, shelf tag or sign

1 for the Products is not printed using the color yellow, the symbol may be printed in black and white.
2 The symbol shall be placed to the left of the text of the warning, in a size no smaller than the height
3 of the word “**WARNING.**” The warning shall be provided directly on each Product or its label,
4 labeling, package, shelf tag or sign with such conspicuousness as compared with other words,
5 statements or designs as to render it likely to be seen, read and understood by an ordinary individual
6 under customary conditions of purchase. However, if Defendant opts to use the Short-Form
7 Warning, said warning must be provided on each Product or its label or package.

8 If Defendant sells the Covered Product that required a warning pursuant to Section 2.1 via an
9 internet website to customers located in California, the warning requirements of this section shall be
10 satisfied as provided for in 27 CCR sections 25601 and 25602, and as they may be subsequently
11 amended. If consumer information is provided on the Covered Product in a foreign language,
12 Defendant shall provide the warning in the foreign language.

13 **3. SETTLEMENT PAYMENTS**

14 **3.1 Payment and Due Date.**

15 Within twenty-one days (21) of the Effective Date, Defendant shall pay a total of one hundred
16 and sixty-seven thousand two hundred and eighty-five dollars (\$167,285.00) in full and complete
17 settlement of all monetary claims by CPG related to the Notice and Complaint as to Defendant, as
18 follows:

19 **3.1.1 Civil Penalty:** Defendant agrees to pay seventeen thousand five hundred
20 dollars (\$17,500.00) as penalties pursuant to Health & Safety Code § 25249.12:

21 Counsel for CPG shall be responsible to issue a check made payable to the State of
22 California’s Office of Environmental Health Hazard Assessment (“OEHHA”) in the amount of
23 thirteen thousand one hundred and twenty five dollars (\$13,125.00) representing 75% of the total
24 penalty and another check to CPG in the amount of four thousand three hundred and seventy five
25 dollars (\$4,375.00) representing 25% of the total penalty; and

26 **3.1.2 Reimbursement of Attorneys’ Fees and Costs:** Defendant shall pay one
27 hundred and forty-nine thousand seven hundred and eighty five dollars (\$149,785.00) to Blackstone
28 Law, APC as complete reimbursement for any and all reasonable investigation fees and costs,

1 attorneys' fees, expert fees, report costs, and any and all other costs and expenses incurred as a result
2 of investigating, bringing this matter to the Defendant' attention, litigating, negotiating a settlement
3 in the public interest, and seeking and obtaining court approval of this Consent Judgment.

4 **3.2** All payments referenced in paragraphs 3.1.1, and 3.1.2 above, shall be made payable
5 to Plaintiff's counsel, Blackstone Law APC in a single lump sum payments of one hundred and
6 sixty-seven thousand, two hundred and eighty-five dollars (\$167,285.00). Plaintiff's counsel will
7 provide Defendant's counsel with wire instructions.

8 **4. MATTERS COVERED BY THIS CONSENT JUDGMENT**

9 **4.1** This Consent Judgment is a full, final, and binding resolution between CPG, on behalf
10 of itself and in the public interest, on the one hand, and (i) Defendant and its officers, directors,
11 attorneys, agents, insurers, employees, parents, shareholders, divisions, subdivisions, subsidiaries,
12 partners, affiliates, sister companies, and their successors and assigns (collectively referred to as
13 "Defendant Releasees"); (ii) all entities to which Defendant Releasees directly or indirectly has
14 distributed or sold the Covered Products, including, but not limited to, Defendant's downstream
15 distributors, suppliers, wholesalers, customers, retailers (iii) and the successors and assigns of any of
16 them (the released entities listed in (i) through (iv) of this Section 4.1 are collectively referred to as
17 "Released Parties") for all claims for violations of Proposition 65 for alleged exposures to DEHP
18 from the Covered Products manufactured, distributed, or sold by Defendant on or before the Effective
19 Date. Defendant's compliance with this Consent Judgment shall constitute compliance by any
20 Released Parties with Proposition 65 with respect to DEHP in the Covered Products manufactured,
21 distributed, or sold after the Effective Date. Nothing in this Section affects CPG's right to commence
22 or prosecute an action under Proposition 65 against any person other than the Released Parties.

23 **4.2** CPG on behalf of itself, its past and current agents, representatives, attorneys,
24 successors, and/or assignees (collectively, the "CPG Releasers"), hereby waives all rights to institute
25 or participate in, directly or indirectly, any form of legal action and releases all claims, including,
26 without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands,
27 obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to,
28 investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, whether known or

1 unknown, fixed or contingent (collectively “Claims”), against the Released Parties arising from any
2 violation of Proposition 65 or any other statutory or common law regarding alleged exposures to, or
3 the failure to warn about alleged exposures to DEHP from the Covered Products. It is possible that
4 Claims not known to the Parties arising out of the facts alleged in the Notices or the Complaints and
5 relating to the Covered Products will develop or be discovered. CPG, on behalf of itself and the CPG
6 Releasers, acknowledges that this Consent Judgment is expressly intended to cover and include all
7 such Claims. CPG has full knowledge of the contents of California Civil Code §1542. CPG, on
8 behalf of itself and the CPG Releasers, acknowledges that the Claims released in this Section 4 may
9 include unknown Claims, and nevertheless waives California Civil Code §1542 as to any such
10 unknown Claims. California Civil Code §1542 reads as follows:

11 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR
12 OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
13 FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
14 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
15 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

16 CPG understands and acknowledges that the significance and consequence of this waiver of
17 California Civil Code §1542.

18 **4.3** Similarly, Michaels waives any and all claims against CPG, its attorneys and other
19 representatives, for any and all actions taken, or statements made (or those that could have been taken
20 or made) by CPG and its attorneys and other representatives, whether in the course of investigating
21 claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with
22 respect to the Subject Product. Michaels represents that its signatory to this Proposed Consent
23 Judgment has full authority to enter into and legally bind Michaels to this Proposed Consent
24 Judgment.

25 **5. ENFORCEMENT OF JUDGMENT**

26 **5.1** The terms of this Consent Judgment shall be enforced exclusively by the Parties
27 hereto. The Parties may, by noticed motion or order to show cause before the Superior Court of
28 California, Los Angeles County, enforce the terms and conditions contained herein. A Party may

1 enforce any of the terms and conditions of this Consent Judgment only after that Party first provides
2 10 days' notice to the Party allegedly failing to comply with the terms and conditions of this Consent
3 Judgment, and attempts to resolve such Party's failure to comply in an open and good faith manner.

4 **5.2 Notice of Violation.** Prior to bringing any motion, order to show cause, or other
5 proceeding to enforce the terms of this Consent Judgment, CPG shall provide a Notice of Violation
6 ("NOV") to the Defendant. The NOV shall include for each of the Covered Product: the date(s) the
7 alleged violation(s) was observed and the location at which the Covered Product were offered for
8 sale, and shall be accompanied by all test data obtained by CPG regarding the Covered Product,
9 including an identification of the component(s) of the Covered Product that were tested.

10 **5.2.1 Non-Contested NOV.** CPG shall take no further action of any kind regarding
11 the alleged violation if, within 60 days of receiving such NOV, the Defendant serves a Notice of
12 Election ("NOE") not to contest the NOV that meets one of the following conditions:

13 (a) A statement that the Covered Product was manufactured and shipped
14 by the Defendant for sale in California before the Effective Date; or

15 (b) A statement that since receiving the NOV the Defendant has taken
16 corrective action by either: (i) taking all steps necessary to bring the sale of the product into
17 compliance under the terms of this Consent Judgment; or (ii) requesting that its customers or stores
18 in California, as applicable, remove the Covered Product identified in the NOV from sale in California
19 and destroy or return the Covered Product to the Defendant or vendor, as applicable; or (iii) refute the
20 information provided in the NOV.

21 **5.2.2 Contested NOV.** Defendant may serve a Notice of Election ("NOE")
22 informing CPG of its election to contest the NOV within 60 days of receiving the NOV.

23 (a) In its election, the Defendant may request that the sample(s) of Covered
24 Product tested by CPG be subject to confirmatory testing at an EPA-accredited laboratory.

25 (b) If the confirmatory testing establishes that the Covered Product does
26 not contain DEHP in excess of the level allowed in Section 2.1, above, CPG shall take no further
27 action regarding the alleged violation. If the testing does not establish compliance with Section 2.1,
28

1 above, the Defendant may withdraw its NOE to contest the violation and may serve a new NOE
2 pursuant to Section 5.2.1.

3 (c) If the Defendant does not withdraw a NOE to contest the NOV, the
4 Parties shall meet and confer for a period of no less than 30 days before CPG may seek an order
5 enforcing the terms of this Consent Judgment.

6 **5.3** In any proceeding brought by either Party to enforce this Consent Judgment, the
7 prevailing Party shall be entitled to recover its reasonable attorney's fees and costs.

8 **6. ENTRY OF CONSENT JUDGMENT**

9 **6.1** CPG shall file a motion seeking approval of this Consent Judgment pursuant to
10 California Health & Safety Code § 25249.7(f).

11 **6.2** If this Consent Judgment is not approved in full by the Court: (a) this Consent
12 Judgment and any and all prior agreements between the Parties merged herein shall terminate and
13 become null and void, and the actions shall revert to the status that existed prior to the execution date
14 of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, or of the
15 negotiation, documentation, or other part or aspect of the Parties' settlement discussions, shall have
16 any effect, nor shall any such matter be admissible in evidence for any purpose in this Action, or in
17 any other proceeding; and (c) the Parties agree to meet and confer to determine whether to modify
18 the terms of the Consent Judgment and to resubmit it for approval.

19 **7. MODIFICATION OF JUDGMENT**

20 **7.1** This Consent Judgment may be modified only upon written agreement of the Parties
21 and upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any Party
22 as provided by law and upon entry of a modified Consent Judgment by the Court.

23 **7.2** Any Party seeking to modify this Consent Judgment shall attempt in good faith to meet
24 and confer with the other Party prior to filing a motion to modify the Consent Judgment.

25 **8. RETENTION OF JURISDICTION**

26 **8.1** This Court shall retain jurisdiction of this matter to implement and enforce the terms
27 of this Consent Judgment under Code of Civil Procedure § 664.6.
28

1 **9. SERVICE ON THE ATTORNEY GENERAL**

2 **9.1** CPG shall serve a copy of this Consent Judgment, signed by both Parties, on the
3 California Attorney General so that the Attorney General may review this Consent Judgment prior to
4 its submittal to the Court for approval. No sooner than forty-five (45) days after the Attorney General
5 has received the aforementioned copy of this Consent Judgment, and in the absence of any written
6 objection by the Attorney General to the terms of this Consent Judgment, the Parties may then submit
7 it to the Court for approval.

8 **10. ATTORNEY FEES**

9 **10.1** Except as specifically provided in Section 3.1.3, each Party shall bear its own costs
10 and attorney fees in connection with this action.

11 **11. ENTIRE AGREEMENT**

12 **11.1** This Consent Judgment contains the sole and entire agreement and understanding of
13 the Parties with respect to the entire subject matter hereof and any and all prior discussions,
14 negotiations, commitments and understandings related hereto. No representations, oral or otherwise,
15 express or implied, other than those contained herein have been made by any Party hereto. No other
16 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
17 any of the Parties.

18 **12. GOVERNING LAW**

19 **12.1** The validity, construction and performance of this Consent Judgment shall be
20 governed by the laws of the State of California, without reference to any conflicts of law provisions
21 of California law.

22 **12.2** The terms of this Consent Judgment shall be governed by the laws of the State of
23 California. Nothing in this Consent Judgment shall be interpreted to relieve Defendant from any
24 obligation to comply with any pertinent state or federal law or regulation.

25 **12.3** The Parties, including their counsel, have participated in the preparation of this
26 Consent Judgment and this Consent Judgment is the result of the joint efforts of the Parties. This
27 Consent Judgment was subject to revision and modification by the Parties and has been accepted and
28 approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or

1 ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of
2 the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment agrees
3 that any statute or rule of construction providing that ambiguities are to be resolved against the
4 drafting Party should not be employed in the interpretation of this Consent Judgment and, in this
5 regard, the Parties hereby waive California Civil Code §1654.

6 **13. EXECUTION AND COUNTERPARTS**

7 **13.1** This Consent Judgment may be executed in counterparts and by means of facsimile or
8 portable document format (pdf), which taken together shall be deemed to constitute one document
9 and have the same force and effect as original signatures.

10 **14. NOTICES**

11 **14.1** Any notices under this Consent Judgment shall be by personal delivery
12 or email.

13 If to CPG:

14 Jonathan Genish, Esq.
15 **Blackstone Law, APC**
16 8383 Wilshire Blvd., Suite 745
17 Beverly Hills, CA 90211
18 jgenish@blackstonepc.com

19 If to Michaels:

20 William F. Tarantino, Esq.
21 **Morrison & Foerster, LLP**
22 425 Market Street
23 San Francisco, CA 94105
24 WTarantino@mof.com

25 **15. AUTHORITY TO STIPULATE**

26 **15.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized by
27 the Party he or she represents to enter into this Consent Judgment and to execute it on behalf of the
28 Party represented and legally to bind that Party.

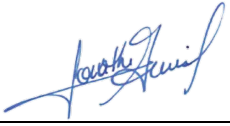
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AGREED TO:

AGREED TO:

Date: March 25, 2026

Date: 03/16/2026

By: 
Consumer Protection Group, LLC

By: *David Kilpatrick*
Michaels Stores Procurement
Company, Inc.

IT IS SO ORDERED, ADJUDGED AND DECREED:

Dated: _____

Judge of the Superior Court
Hon. Joseph M. Lipner