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Environmental Health Advocates, Inc.

10
11 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**

12 **IN AND FOR THE COUNTY OF ALAMEDA**

13 ENVIRONMENTAL HEALTH
14 ADVOCATES, INC.,

15 Plaintiff,

16 v.

17 MICHAELS STORES PROCUREMENT
18 COMPANY, INC., a Delaware corporation;
and DOES 1 through 100, inclusive,

19 Defendants.

Case No. 24CV068647

**[PROPOSED] AMENDED CONSENT
JUDGMENT**

(Health & Safety Code § 25249.6 *et seq.* and
Code Civ. Proc. § 664.6)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Environmental Health Advocates, Inc.,
4 (“EHA” or “Plaintiff”) and Michaels Stores Procurement Company, Inc. (“Defendant” or “Michaels”)
5 with EHA and Michaels each individually referred to as a “Party” and collectively referred to as the
6 “Parties.”

7 **1.2 Plaintiff**

8 EHA is a corporation organized in the state of California, acting in the interest of the general
9 public. It seeks to promote awareness of exposures to toxic chemicals and to improve human health by
10 reducing or eliminating hazardous substances contained in consumer products.

11 **1.3 Defendant**

12 Michaels employs ten or more individuals and for purposes of this Consent Judgment only, is
13 a “person in the course of doing business” for purposes of the Safe Drinking Water and Toxic
14 Enforcement Act of 1986, Health and Safety Code section 25249.6 et seq. (“Proposition 65”).

15 **1.4 General Allegations**

16 EHA alleges that Michaels manufactures, imports, sells, and distributes for sale (1) Found
17 Objects Antique Silver, Copper & Brass Gears by Bear Landing, (2) Ashland Planter – Warm Heritage,
18 (3) Ashland Gold Thumb Table Décor, (4) Ashland Basic Elements Candle Holder, (5) Bead Landing
19 Cable Necklaces, (6) Studio Décor Gold Frame, (7) Ashland Metal Hanging Container, and (8) Studio
20 Decor Plate Hanger that contain lead. EHA further alleges that Michaels does so without providing a
21 sufficient health hazard warning as required by Proposition 65 and related Regulations. Michaels denies
22 these allegations and asserts that its products are safe and in compliance with all applicable laws, rules
23 and regulations.

24 **1.5 Notice of Violation**

25 On or around October 13, 2023, June 27, 2024, and June 28, 2024, EHA served Defendant
26 Michaels, the California Attorney General, and all other required public enforcement agencies with 60-
27 Day Notices of Violation of Proposition 65 (the “Notices”). The Notices alleged that Michaels violated
28 Proposition 65 by failing to sufficiently warn consumers in California of the health hazards associated

1 with exposures to lead contained in various home décor and craft supplies products, specifically: (1)
2 Found Objects Antique Silver, Copper & Brass Gears by Bear Landing, (2) Ashland Planter – Warm
3 Heritage, (3) Ashland Gold Thumb Table Décor, (4) Ashland Basic Elements Candle Holder, (5) Bead
4 Landing Cable Necklaces, (6) Studio Décor Gold Frame, (7) Ashland Metal Hanging Container, and
5 (8) Studio Decor Plate Hanger – all of which EHA alleged contain lead and are imported, sold, shipped,
6 delivered, or distributed for sale to consumers in California by Michaels.

7 No public enforcer has commenced or is otherwise prosecuting an action to enforce the
8 violations alleged in the Notices.

9 **1.6 Product Description**

10 The products covered by this Consent Judgment are home décor and craft supplies, including
11 but not limited to: (1) Found Objects Antique Silver, Copper & Brass Gears by Bear Landing, (2)
12 Ashland Planter – Warm Heritage, (3) Ashland Gold Thumb Table Décor, (4) Ashland Basic Elements
13 Candle Holder, (5) Bead Landing Cable Necklaces, (6) Studio Décor Gold Frame, (7) Ashland Metal
14 Hanging Container, and (8) Studio Decor Plate Hanger, and are imported, sold, shipped, delivered, or
15 distributed for sale to consumers in California by Michaels (“Covered Products”).

16 **1.7 State of the Pleadings**

17 On or around March 21, 2024, EHA filed a Complaint against Michaels for the alleged violation
18 of Proposition 65 pertaining to Found Objects Antique Silver, Copper & Brass Gears by Bear Landing
19 (“Complaint”). On March 10, 2025, Plaintiff filed a Supplemental Complaint to include seven
20 additional home décor products that allegedly expose consumers to lead in violation of Proposition 65
21 (“Supplemental Complaint”).

22 **1.8 No Admission**

23 Michaels denies the material factual and legal allegations of the Notices, Complaint, and
24 Supplemental Complaint, and maintains that all of the products it has manufactured, imported, sold,
25 and/or distributed for sale in California, including Covered Products, have been, and are, in compliance
26 with all applicable laws, rules and regulations. Nothing in this Consent Judgment shall be construed as
27 an admission of any fact, finding, conclusion of law, issue of law, or violation of law, nor shall
28 compliance with this Consent Judgment be construed as an admission of any fact, finding, conclusion

1 of law, issue of law, or violation of law. This Section shall not, however, diminish or otherwise affect
2 Michaels 's obligations, responsibilities, and duties under this Consent Judgment.

3 **1.9 Jurisdiction**

4 For purposes of this Consent Judgment and the Complaint only, the Parties stipulate that this
5 Court has jurisdiction over Michaels as to the allegations in the Complaint, that venue is proper in the
6 County of Alameda, and that the Court has jurisdiction to enter and enforce the provisions of this
7 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

8 **1.10 Effective Date**

9 For purposes of this Consent Judgment, the term “Effective Date” means the date on which this
10 Consent Judgment is approved by the Court.


11 **2. INJUNCTIVE RELIEF**

12 **2.1 Clear and Reasonable Warnings**

13 Commencing on the Effective Date, Michaels agrees any Covered Product sold in California,
14 and which are distributed or directly sold by Michaels in the State of California on or after the Effective
15 Date, shall contain a “clear and reasonable” Proposition 65 warning, within the meaning of Section
16 25249.6 of the Act. Michaels agrees that each warning shall be prominently placed with such
17 conspicuousness, as compared with other words, statements, designs, or devices as to render it likely
18 to be seen, read and understood by an ordinary individual under customary conditions before purchase
19 or use. Each warning shall be provided in a manner such that the consumer or user understands to
20 which specific Covered Products the warning applies, and which listed chemical(s) is/are implicated,
21 so as to minimize the risk of consumer confusion.


22 For purposes of this Settlement Agreement, a clear and reasonable warning for the Covered
23 Products shall consist of a product-specific warning via one or more of the following methods: (1) A
24 posted sign, shelf tag, or shelf sign for the consumer product at each point of display of the product;
25 (2) Any electronic device or process that automatically provides the warning to the purchaser (not
26 applicable to internet purchases, which are subject to the provisions of § 25602(b)); (3) A warning
27 directly affixed to the product’s label or tag; or (4) A short-form warning on the label that complies
28 with the content requirements set forth in §§ 25603(b) and 25603(a). Specifically, pursuant to §

1 25603(a) – (d), one of the following statements must be utilized:


- 2 1)  **WARNING:**” [or] “**CA WARNING:**” [or] “**CALIFORNIA**
3 **WARNING:**” This product can expose you to chemicals including
4 lead, which is known to the State of California to cause cancer and
5 birth defects or other reproductive harm. For more information go
6 to www.P65Warnings.ca.gov.

5 **OR**

6 **SHORT FORM**


- 7 2)  **WARNING:**” [or] “**CA WARNING:**” [or] “**CALIFORNIA WARNING:**
8 Risk of cancer and reproductive harm from exposure to lead. See
9 www.P65Warnings.ca.gov.

9 **OR**

- 10 **SHORT FORM** 3)  **WARNING:**” [or] “**CA WARNING:**” [or] “**CALIFORNIA**
11 **WARNING:** Can expose you to lead, a carcinogen and
12 reproductive toxicant. See www.P65Warnings.ca.gov.

13 **SHORT FORM**
14 **ON A**
15 **PRODUCT**
16 **MANUFACTUR**
17 **ED/LABELED**
18 **PRIOR TO**
19 **1/1/28,**
20 **REGARDLESS**
21 **OF DATE OF**
22 **SALE**

14 **OR**

- 15 4)  **WARNING:** Cancer and Reproductive Harm –
16 www.P65Warnings.ca.gov.

19 The triangle above shall be yellow on the warning statement. Where the sign, label, or shelf tag
20 for the product is not printed using the color yellow, the symbol may be printed in black and white.
21 The symbol shall be placed to the left of the warning text, in a size no smaller than the height of the
22 word, “WARNING.” A short-form warning must be provided on a product in a type size that complies
23 with Cal. Code Regs Tit. 27, § 25601(c). In no case shall a warning statement displayed on the Covered
24 Products’ packaging appear in a type size smaller than 6-point type. Where a sign, labeling, or label as
25 defined in Section 256001.1 is used to provide a warning that includes consumer information about a
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1 product in a language other than English, the warning must also be provided in that language in addition
2 to English.

3 As set forth in Cal. Code Regs. Tit. 27, § 25602(b), to the extent Covered Products are sold
4 online, a warning that complies with the content requirements of Cal. Code Regs Tit. 27, § 25603 must
5 be provided via of the following methods: (1) A warning on the product display page; (2) A clearly
6 marked hyperlink using the word “WARNING” or the words “CA WARNING” or “CALIFORNIA
7 WARNING” on the product display page that links to the warning; or (3) An otherwise prominently
8 displayed warning provided to the purchaser prior to completing the purchase. If a warning is provided
9 using the short-form label content pursuant to Section 25602(a)(4), the warning provided on the website
10 may use the same content. For internet purchases made prior to 1/1/28, a retail seller is not responsible
11 under Section 25600.2(e)(4) for conspicuously posting or displaying the new warning online until 60
12 calendar days after the retailer receives a warning or a written notice under Section 25600.2(b) and (c)
13 which updates a short-form warning compliant with Section 25603(c) with content compliant with
14 Section 25603(b). These requirements extend to any websites under the exclusive control of Michaels
15 where Covered Products are sold into California. In addition, Michaels shall instruct any third-party
16 website to which it directly sells its Covered Products to include the same online warning, as set forth
17 above, as a condition of selling the Covered Products in California.

18 (i) Changes in Warning Regulations or Statutes

19 In the event that the Office of Environmental Health Hazard Assessment promulgates one or
20 more regulations requiring or permitting Proposition 65 warning text and/or methods of transmission
21 applicable to the Covered Products and the chemical at issue, which are different than those set forth
22 above, Michaels shall be entitled to use, at its discretion, such other warning text and/or method of
23 transmission without being deemed in breach of this Agreement.

24 In the event that Proposition 65 is repealed, or is otherwise rendered inapplicable for reasons,
25 including but not limited to changes in the law; or in the event the California Office of Health Hazard
26 Assessment adopts a regulation or safe use determination, or issues an interpretive guideline that
27 exempts Covered Products from meeting the requirements of Proposition 65; or if lead cases are
28 permanently enjoined by a court of competent jurisdiction; or if Proposition 65 is determined to be

1 preempted by federal law or a burden on First Amendment rights with respect to lead in Covered
2 Products or Covered Products substantially similar to Covered Products, then Michaels may move to
3 modify this Consent Judgment accordingly.

4 **2.3 Sell-Through Period**

5 Notwithstanding anything else in this Consent Judgment, Covered Products that are
6 manufactured, packaged, or put into commerce on or before the Effective Date shall be subject to the
7 release of liability pursuant to this Consent Judgment, without regard to when such Covered Products
8 were, or are in the future, distributed or sold. As a result, the obligations of Michaels, or any Releasees
9 (if applicable), stated in this Section 2 do not apply to Covered Products manufactured, packaged, or
10 put into commerce on or before the Effective Date.

11 **3. MONETARY SETTLEMENT TERMS**

12 **3.1 Settlement Amount**

13 Michaels shall pay sixty five thousand dollars (\$65,000.00) in settlement and total satisfaction
14 of all the claims referred to in the Notice(s), the Complaint, and this Consent Judgment. This includes
15 civil penalties in the amount of five thousand dollars (\$5,000.00) pursuant to Health and Safety Code
16 section 25249.7(b) and attorneys' fees and costs in the amount of sixty thousand dollars (\$60,000.00)
17 pursuant to Code of Civil Procedure section 1021.5.

18 **3.2 Civil Penalty**

19 The portion of the settlement attributable to civil penalties shall be allocated according to Health
20 and Safety Code section 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid
21 to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining
22 twenty-five percent (25%) of the penalty paid to EHA individually. The five thousand dollars
23 (\$5,000.00) in civil penalties shall be paid as follows:

- 24 • One payment of \$3,750.00 to OEHHA, due 30 (thirty) days after the Effective Date.
- 25 • One payment of \$1,250.00 to EHA, due 30 (thirty) days after the Effective date.

26 All payments owed to EHA shall be delivered to the following address:
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1
2 Environmental Health Advocates
3 225 Broadway, Suite 2100
4 San Diego, CA 92101

5 All payments owed to OEHHA (EIN: 68-0284486) shall be delivered directly to OEHHA
6 (Memo Line "Prop 65 Penalties") at the following addresses:

7 For United States Postal Service Delivery:

8 Mike Gyurics
9 Fiscal Operations Branch Chief
10 Office of Environmental Health Hazard Assessment
11 P.O. Box 4010
12 Sacramento, CA 95812-4010

13 For Federal Express 2-Day Delivery:

14 Mike Gyurics
15 Fiscal Operations Branch Chief
16 Office of Environmental Health Hazard Assessment
17 1001 I Street
18 Sacramento, CA 95814

19 Michaels agrees to provide EHA's counsel with a copy of the check payable to OEHHA,
20 simultaneous with its penalty payment to EHA.

21 Plaintiff and its counsel will provide completed IRS 1099, W-9, or other tax forms as required.
22 Relevant information is set out below:

- 23 • "Environmental Health Advocates, Inc." (EIN: 84-2322975) at the address provided above.
- 24 • "Office of Environmental Health Hazard Assessment" 1001 I Street, Sacramento, CA 95814.

25 **3.3 Attorney's Fees and Costs**

26 The portion of the settlement attributable to attorneys' fees and costs shall be paid to EHA's
27 counsel, who are entitled to attorneys' fees and costs incurred by it in this action, including but not
28 limited to investigating potential violations, bringing this matter to Michaels 's attention, as well as
litigating and negotiating a settlement in the public interest.

Michaels shall provide its payment for civil penalty and for attorneys' fees and costs to EHA's
counsel by physical check or by electronic means, including wire transfers, at Michaels' discretion, as
follows: One payment of \$60,000.00, due thirty (30) days after the Effective Date.

The attorney fee payments shall be made payable to Entorno Law, LLP and delivered to:

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3 **4. CLAIMS COVERED AND RELEASE**

4 **4.1 EHA's Public Release of Proposition 65 Claims**

5 Plaintiff, acting on its own behalf and in the public interest, releases Michaels, and its parents,
6 subsidiaries, affiliated entities under common ownership or control, its directors, officers, principals,
7 agents, employees, attorneys, insurers, accountants, predecessors, successors, and assigns ("Defendant
8 Entities"), each entity to whom Defendant directly or indirectly distributes, ships, or sells the Covered
9 Products, including but not limited to downstream distributors, wholesalers, customers, retailers
10 (including but not limited to Michael's Stores Procurement Company, Inc.), and marketplaces,
11 franchisees, franchisors, cooperative members, suppliers, licensees, and licensors, and all of the
12 foregoing entities' owners, directors, officers, agents, principals, employees, attorneys, insurers,
13 accountants, representatives, predecessors, successors, and assigns (collectively referred to as the
14 "Releasees") from all claims for violations of Proposition 65 for exposures to lead from Covered
15 Products sold prior to the Effective Date. Compliance with the terms of this Consent Judgment
16 constitutes compliance with Proposition 65 with respect to exposures to lead from Covered Products.
17 This Consent Judgment is a full, final, and binding resolution of all claims under Proposition 65 that
18 were or could have been asserted against Michaels and/or Releasees for failure to comply with
19 Proposition 65 for alleged exposure to lead from Covered Products. This release does not extend to any
20 third-party retailers selling the product on a website who, after receiving instruction from Michaels to
21 include a warning as set forth above in Section 2.2, do not include such a warning.

22 **4.2 EHA's Individual Release of Claims**

23 EHA, in its individual capacity, also provides a release to Michaels and/or Releasees, which
24 shall be a full and final accord and satisfaction of, as well as a bar to, all actions, causes of action,
25 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of every
26 nature, character, and kind, whether known or unknown, suspected or unsuspected, arising out of
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1 alleged or actual exposures to lead in Covered Products manufactured, imported, sold, or distributed
2 by Michaels before the Effective Date.

3 **4.3 Michaels' Release of EHA**

4 Michaels on its own behalf, and on behalf Defendant Entities as well as its past and current
5 agents, representatives, attorneys, successors, and assignees, hereby waives any and all claims against
6 EHA and its attorneys and other representatives, for any and all actions taken or statements made by
7 EHA and its attorneys and other representatives, whether in the course of investigating claims,
8 otherwise seeking to enforce Proposition 65 against them, in this matter or with respect to the Covered
9 Products.

10 **4.4 No Other Known Claims or Violations**

11 EHA and EHA's counsel affirm that they are not presently aware of any actual or alleged
12 violations of Proposition 65 by Michaels or for which Michaels bears legal responsibility other than
13 those that are fully resolved by this Consent Judgment.

14 **5. COURT APPROVAL**

15 This Consent Judgment is not effective until it is approved by the Court and shall be null and
16 void if it is not approved by the Court within one year after it has been fully executed by the Parties, or
17 by such additional time as the Parties may agree to in writing.

18 **6. SEVERABILITY**

19 Subsequent to the Court's approval and entry of this Consent Judgment, if any provision is held
20 by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

21 **7. GOVERNING LAW**

22 The terms of this Consent Judgment shall be governed by the laws of the state of California as
23 applied within the state of California. In the event that Proposition 65 is repealed, or is otherwise
24 rendered inapplicable for reasons, including but not limited to changes in the law; or in the event the
25 California Office of Health Hazard Assessment adopts a regulation or safe use determination, or issues
26 an interpretive guideline that exempts Covered Products from meeting the requirements of Proposition
27 65; or if lead cases are permanently enjoined by a court of competent jurisdiction; or if Proposition 65
28 is determined to be preempted by federal law or a burden on First Amendment rights with respect to

1 lead in Covered Products or Covered Products substantially similar to Covered Products, then Michaels
2 may seek relief from the injunctive obligations imposed by this Consent Judgment to the extent any
3 Covered Products are so affected by moving to modify the agreement via the mechanisms set forth in
4 Section 12.

5 **8. ENFORCEMENT**

6 In any action to enforce the terms of this Consent Judgment, the prevailing party shall be entitled
7 to its reasonable attorneys' fees and costs. The injunctive terms of this Consent Judgment may be
8 enforced by public agency prosecutors pursuant to California Health and Safety Code section
9 25249.7(c), and/or by private party prosecutors acting "in the public interest" under California Health
10 and Safety Code section 25249.7(d).

11 **9. NOTICE**

12 Unless otherwise specified herein, all correspondence and notice required by this Consent
13 Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified
14 mail, return receipt requested; or (iii) a recognized overnight courier; and (iv) with a copy by email; to
15 the following addresses:

16 If to Michaels:

17 William F. Tarantino
18 Morrison & Foerster LLP
19 425 Market Street
20 San Francisco, CA 94105
21 WTarantino@mofo.com

16 If to EHA:

17 Noam Glick
18 Entorno Law, LLP
19 225 Broadway, Suite 2100
20 San Diego, CA 92101
21 noam@entornolaw.com

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

24 **10. COUNTERPARTS; DIGITAL SIGNATURES**

25 This Consent Judgment may be executed in counterparts and by facsimile signature, each of
26 which shall be deemed an original, and all of which, when taken together, shall constitute one and the
27 same document.
28

1 **11. POST EXECUTION ACTIVITIES**

2 EHA agrees to comply with the reporting form requirements referenced in Health and Safety
3 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
4 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement, which
5 motion EHA shall draft and file. In furtherance of obtaining such approval, the Parties agree to mutually
6 employ their reasonable best efforts, including those of their counsel, to support the entry of this
7 agreement as judgment, and to obtain judicial approval of their settlement in a timely manner. For
8 purposes of this Section, “best efforts” shall include, at a minimum, supporting the motion for approval,
9 responding to any objection that any third-party may make, and appearing at the hearing before the
10 Court if so requested.

11 **12. MODIFICATION**

12 This Consent Judgment may be modified by: (i) a written agreement of the Parties and entry of
13 a modified consent judgment thereon by the Court; or (ii) a successful motion or application of any
14 Party, and the entry of a modified consent judgment thereon by the Court.

15 **13. AUTHORIZATION**

16 The undersigned are authorized to execute this Consent Judgment and acknowledge that they
17 have read, understand, and agree to all of the terms and conditions contained herein.

18 **14. GOOD FAITH ATTEMPT TO RESOLVE DISPUTES**

19 If a dispute arises with respect to either Party’s compliance with the terms of this Consent
20 Judgment entered by the Court, the Parties shall meet and confer in person or by telephone to resolve
21 the dispute in an amicable manner. No action or motion may be filed sooner than 15 (fifteen) days after
22 the Parties’ meet and confer.

23 **15. ENTIRE AGREEMENT**

24 This Consent Judgment contains the sole and entire agreement and understanding of the Parties
25 with respect to the entire subject matter herein, and any and all prior discussions, negotiations,
26 commitments, and understandings related hereto. No representations, oral or otherwise, express or
27 implied, other than those contained herein have been made by any Party. No other agreements, oral or
28 otherwise, unless specifically referred to herein, shall be deemed to exist or to bind any Party.

1 **AGREED TO:**

AGREED TO:

2
3 Date: 2/11/26

Date: 3/02/26

4
5 By: 
6 ENVIRONMENTAL HEALTH
7 ADVOCATES, INC.

By: *David Kilpatrick*
MICHAELS STORES PROCUREMENT
COMPANY, INC.

8 **IT IS SO ORDERED.**

9
10 Date: _____

11 JUDGE OF THE SUPERIOR COURT