

UNITED STATES OF AMERICA  
CONSUMER PRODUCT SAFETY COMMISSION

\_\_\_\_\_  
In the Matter of )  
MICHAELS STORES, INC. )  
\_\_\_\_\_

CPSC Docket No. 09-C0024

SETTLEMENT AGREEMENT

1. In accordance with 16 C.F.R. § 1118.20, Michaels Stores, Inc. ("Michaels") and the staff ("Staff") of the United States Consumer Product Safety Commission ("CPSC" or the "Commission") enter into this Settlement Agreement ("Agreement"). The Agreement and the incorporated attached Order ("Order") settle the Staff's allegations set forth below.

PARTIES

2. The Commission is an independent federal regulatory agency established pursuant to, and responsible for the enforcement of, the Consumer Product Safety Act, 15 U.S.C. §§ 2051 – 2089 ("CPSA").

3. Michaels is a corporation organized and existing under the laws of Delaware, with its principal offices located in Irving, Texas. At all times relevant hereto, Michaels imported and/or sold children's products, among other arts and crafts merchandise in various categories such as Seasonal, Kids Crafts and Paper Crafts.

STAFF ALLEGATIONS

4. Beginning in August 2007, Michaels imported into the United States about 310,000 units of certain seasonal writing pens, consisting of "Flower Writers," "Christmas Writers," "Easter Writers" and "Spooky Writers" styles, each bearing applicable themed decorations including flowers, Christmas, Easter and Halloween ornamentation ("Pen(s)"). The Pens were, in turn, offered for sale or

sold to consumers at Michaels stores nationwide from August 2007 through March 2008 for about \$1 per unit.

5. The Pens are "consumer product(s)," and, at all times relevant hereto, Michaels was a "manufacturer" and/or a "retailer" of those consumer product(s), which were "distributed in commerce," as those terms are defined in CPSA sections 3(a)(3), (5), (8), (11), and (13), 15 U.S.C. §§ 2052(a)(3), (5), (8), (11), and (13).

6. The Pens are articles intended to be entrusted to or for use by children, and, therefore, are subject to the requirements of the Commission's Ban of Lead-Containing Paint and Certain Consumer Products Bearing Lead-Containing Paint, 16 C.F.R. Part 1303 (the "Ban"). Under the Ban, toys and other children's articles must not bear "lead-containing paint," defined as paint or other surface coating materials whose lead content is more than 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film. 16 C.F.R. § 1303.2(b)(1)

7. On October 28, 2007, the Staff obtained from the University of Ashland's Department of Chemistry laboratory results relating to, in pertinent part, testing for the presence of lead in surface paints on samples of the Flower Writers and Christmas Writers Pens purchased from a Michaels store in Mansfield, Ohio. The University's test results demonstrated that each of twelve paint colors tested contained excessive lead levels, with an average total lead content of 2.53 percent, and an upper range as high as 5.07 percent. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban.

8. In March 2008, Michaels reported to CPSC that it had commissioned an independent laboratory to conduct further testing for the presence of lead in surface coatings on additional Pen samples. As expressed in two test reports issued concurrently, the confirmatory testing demonstrated that four (4) composite paint colors obtained from different locations of the Flower Writers Pens contained a total lead content from 4,400 parts per million (ppm) up to 37,000 ppm; and that six (6)

composite paint colors obtained from different locations of the Easter Writers Pens contained a total lead content from 970 ppm to 31,000 ppm. These levels of lead are in excess of the permissible 0.06 percent limit set forth in the Ban.

9. On April 10, 2008, the Commission and Michaels announced a consumer-level recall of about 310,000 units of the Pens because "The seasonal writing pens' surface coating contains high levels of lead, violating the federal lead paint standard."

10. Although Michaels reported no incidents or injuries associated with the Pens, it failed to take adequate action to ensure that none would bear or contain lead-containing paint, thereby creating a risk of lead poisoning and adverse health effects to children.

11. The Pens constitute "banned hazardous products" under CPSA section 8 and the Ban, 15 U.S.C. § 2057 and 16 C.F.R. §§ 1303.1(a)(1), 1303.4(b), in that they bear or contain paint or other surface coating materials whose lead content exceeds the permissible limit of 0.06 percent of the weight of the total nonvolatile content of the paint or the weight of the dried paint film.

12. Between August 2007 and March 2008, Michaels sold, manufactured for sale, offered for sale, distributed in commerce, or imported into the United States, or caused one or more of such acts, with respect to the aforesaid banned hazardous Pens, in violation of section 19(a)(1) of the CPSA, 15 U.S.C. § 2068(a)(1). Michaels committed these prohibited acts "knowingly," as that term is defined in section 20(d) of the CPSA, 15 U.S.C. § 2069(d).

13. Pursuant to section 20 of the CPSA, 15 U.S.C. § 2069, Michaels is subject to civil penalties for the aforementioned violations.

#### MICHAELS RESPONSE

14. Michaels denies the Staff's allegations set forth above that Michaels knowingly violated the CPSA.

## AGREEMENT OF THE PARTIES

15. Under the CPSA, the Commission has jurisdiction over this matter and over Michaels.

16. The parties enter into the Agreement for settlement purposes only. The Agreement does not constitute an admission by Michaels, or a determination by the Commission, that Michaels has knowingly violated the CPSA.

17. In settlement of the Staff's allegations, Michaels shall pay a civil penalty in the amount of forty five thousand dollars (\$45,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. This payment shall be made by check payable to the order of the United States Treasury.

18. Upon the Commission's provisional acceptance of the Agreement, the Agreement shall be placed on the public record and published in the *Federal Register* in accordance with the procedures set forth in 16 C.F.R. § 1118.20(e). In accordance with 16 C.F.R. § 1118.20(f), if the Commission does not receive any written request not to accept the Agreement within fifteen (15) days, the Agreement shall be deemed finally accepted on the sixteenth (16th) day after the date it is published in the *Federal Register*.

19. Upon the Commission's final acceptance of the Agreement and issuance of the final Order, Michaels knowingly, voluntarily, and completely waives any rights it may have in this matter to the following: (1) an administrative or judicial hearing; (2) judicial review or other challenge or contest of the validity of the Commission's Order or actions; (3) a determination by the Commission of whether Michaels failed to comply with the CPSA and its underlying regulations; (4) a statement of findings of fact and conclusions of law; and (5) any claims under the Equal Access to Justice Act.

20. The Commission may publicize the terms of the Agreement and Order.

21. The Agreement and Order shall apply to, and be binding upon, Michaels and each of its successors and assigns.

22. The Commission issues the Order under the provisions of the CPSA, and violation of the Order may subject Michaels to appropriate legal action.

23. The Agreement may be used in interpreting the Order. Understandings, agreements, representations, or interpretations apart from those contained in the Agreement and Order may not be used to vary or contradict its terms. The Agreement shall not be waived, amended, modified, or otherwise altered, except in a writing that is executed by the party against whom such waiver, amendment, modification, or alteration is sought to be enforced.

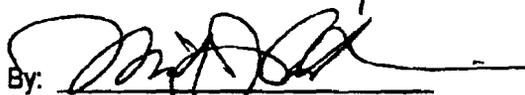
24. If any provision of the Agreement and Order is held to be illegal, invalid, or unenforceable under present or future laws effective during the terms of the Agreement and Order, such provision shall be fully severable. The balance of the Agreement and Order shall remain in full force and effect, unless the Commission and Michaels agree that severing the provision materially

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affects the purpose of the Agreement and Order.

MICHAELS STORES, INC.

Dated: 2/3/09

By: 

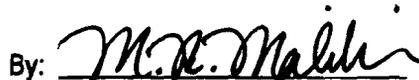
Michael Veitenheimer  
Senior Vice President, General Counsel and Secretary  
Michaels Stores, Inc.  
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U.S. CONSUMER PRODUCT SAFETY COMMISSION  
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Office of the General Counsel

Dated: 3/6/09

By: 

M. Reza Malihi, Trial Attorney  
Division of Compliance  
Office of the General Counsel

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CPSC Docket No. 09-C0024

ORDER

Upon consideration of the Settlement Agreement entered into between Michaels Stores, Inc. ("Michaels") and the U.S. Consumer Product Safety Commission ("Commission") staff, and the Commission having jurisdiction over the subject matter and over Michaels, and it appearing that the Settlement Agreement and Order are in the public interest, it is

ORDERED, that the Settlement Agreement be, and hereby is, accepted; and it is

FURTHER ORDERED, that Michaels shall pay a civil penalty in the amount of forty five thousand dollars (\$45,000.00) within twenty (20) calendar days of service of the Commission's final Order accepting the Agreement. The payment shall be made by check payable to the order of the United States Treasury. Upon the failure of Michaels to make any of the foregoing payments when due, interest on the unpaid amount shall accrue and be paid by Michaels at the federal legal rate of

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interest set forth at 28 U.S.C. § 1961(a) and (b).

Provisionally accepted and provisional Order issued on the 8<sup>th</sup> day of July, 2009.

BY ORDER OF THE COMMISSION:



Todd A. Stevenson, Secretary  
U.S. Consumer Product Safety Commission