

1 Clifford A. Chanler, State Bar No. 135534
Josh Voorhees, State Bar No. 241436
2 THE CHANLER GROUP
2560 Ninth Street
3 Parker Plaza, Suite 214
Berkeley, CA 94710-2565
4 Telephone: (510) 848-8880
Facsimile: (510) 848-8118
5

6 Attorneys for Plaintiff
ANTHONY E. HELD, PH.D., P.E.
7

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION
11

12 ANTHONY E. HELD, PH.D., P.E.,

13 Plaintiff,

14 v.

15 MICHAELS STORES, INC., *et al.*,

16 Defendants.
17

Case No. CIV1504660

**[PROPOSED] CONSENT JUDGMENT
AS TO MICHAELS STORES, INC.**

(Health & Safety Code § 25249.6 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between Anthony E. Held, Ph.D., P.E. (“Held”) and defendant Michaels Stores, Inc. (“Michaels”), with Held and Michaels each individually referred to as a “Party” and collectively as the “Parties.”

6 **1.2 Plaintiff**

7 Held is an individual residing in California who seeks to promote awareness of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous substances contained in consumer products.

10 **1.3 Defendant**

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

14 **1.4 Plaintiff’s Allegations**

15 Held alleges that Michaels manufactures, imports, sells, or distributes for sale in California, vinyl/PVC gloves that contain diisononyl phthalate (“DINP”) without first providing the exposure warning required by Proposition 65. DINP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer.

19 **1.5 Product Description**

20 The products covered by this Consent Judgment are vinyl/PVC gloves containing DINP including, but not limited to, the *ArtMinds Multi Purpose Vinyl Gloves*, #85569-2015-01, UPC No. 4 00100 71441 6, manufactured, imported, sold, or distributed for sale in California by Michaels, hereinafter the “Products.”

24 **1.6 Notice of Violation**

25 On or about September 24, 2015, Held served Michaels and certain 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 that the Products expose

1 users to DINP. To the best of the Parties' knowledge, no public enforcer has commenced and is
2 diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On December 31, 2015, Held filed an instant action ("Complaint") naming Michaels for its
5 alleged violations of Health and Safety Code section 25249.6 that are the subject of the Notice.

6 **1.8 No Admission**

7 Michaels denies the material, factual, and legal allegations contained in the Notice and
8 Complaint, and it maintains that all of the products that it has sold and distributed for sale in
9 California, including the Products, have been, and are, in compliance with all laws. Nothing in this
10 Consent Judgment shall be construed as an admission of any fact, finding, conclusion of law, issue of
11 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed
12 as an admission of any fact, finding, conclusion of law, issue of law, or violation of law. This
13 Section shall not, however, diminish or otherwise affect Michaels's obligations, responsibilities, and
14 duties under this Consent Judgment.

15 **1.9 Jurisdiction**

16 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
17 jurisdiction over Michaels as to the allegations contained in the Complaint, that venue is proper in the
18 County of Marin, and that the Court has jurisdiction to enter and enforce the provisions of this
19 Consent Judgment pursuant to Proposition 65 and Code of Civil Procedure section 664.6.

20 **1.10 Effective Date**

21 For purposes of this Consent Judgment, the term "Effective Date" means the date on which
22 the Consent Judgment is approved and entered by the Court.

23 **2. INJUNCTIVE RELIEF: REFORMULATION**

24 **2.1 Reformulated Products**

25 Commencing on the date on which this Consent Judgment is executed by all parties, and
26 continuing thereafter, Michaels shall only purchase for sale in California, "Reformulated Products."
27 Reformulated Products are products that contain DINP in concentrations less than 0.1 percent (1,000
28 parts per million) when analyzed pursuant to U.S. Environmental Protection Agency testing

1 methodologies 3580A and 8270C or other methodology utilized by federal or state government
2 agencies for the purpose of determining DINP content in a solid substance.

3 **3. MONETARY SETTLEMENT TERMS**

4 **3.1 Civil Penalty Payments**

5 Pursuant to Health & Safety Code § 25249.7(b), in settlement of all the claims referred to in
6 this Consent Judgment, Michaels shall pay \$5,000 in civil penalties, after applying a \$10,000 credit
7 for Michaels's commitment to reformulate as set forth in Section 2.1. The civil penalty payment
8 shall be allocated according to Health and Safety Code section 25249.12(c)(1) and (d) with seventy-
9 five percent (75%) of the funds paid to the California Office of Environmental Health Hazard
10 Assessment ("OEHHA") and twenty-five percent (25%) of the funds remitted to Held. To address
11 the requirements of this paragraph Michaels shall, by no later than ten days following the Effective
12 Date, provide (a) one check made payable to "OEHHA" in the amount of \$3,750 to which tax
13 identification number 68-0284486 shall be assigned and (b) a separate check made payable to
14 "Anthony E. Held, Ph.D., P.E." for \$1,250 to which a tax identification number provided by
15 plaintiff's counsel within at least three days of the Effective Date shall be assigned. Both of these
16 checks shall be sent to the address found in Section 3.3 below.

17 **3.2 Reimbursement of Attorney's Fees and Costs**

18 The parties acknowledge that Held and his counsel offered to resolve this dispute without
19 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving the issue to
20 be resolved after the material terms of this Consent Judgment had been settled. Shortly after the
21 other settlement terms had been finalized, Michaels expressed a desire to resolve Held's fees and
22 costs. The parties then attempted to (and did) reach an accord on the compensation due to Held and
23 his counsel under general contract principles and the private attorney general doctrine codified at
24 California Code of Civil Procedure section 1021.5 for all work performed or to be performed by Held
25 and his counsel in this matter, exclusive of fees and costs incurred on appeal, if any. Under these
26 legal principles, Michaels shall, by no later than ten days following the Effective Date, provide a
27 check in the amount of \$28,000 to "The Chanler Group" to which tax identification number 94-
28 3171522 shall be assigned. This check shall also be sent to the address found in Section 3.3 below.

1 **3.3 Issuance of Payments.**

2 All payments owed pursuant to Section 3.1 and 3.2 shall be delivered to the following
3 address:

4 The Chanler Group
5 Attn: Proposition 65 Controller
6 (Held v. Michaels/DINP in Gloves CJ)
7 2560 Ninth Street
8 Parker Plaza, Suite 214
9 Berkeley, CA 94710

10 **4. CLAIMS COVERED AND RELEASED**

11 **4.1 Held’s Public Release of Proposition 65 Claims**

12 Held, acting on his own behalf and in the public interest, releases Michaels and its parents,
13 subsidiaries, affiliated entities under common ownership, and each of their directors, officers,
14 employees, and attorneys (“Releasees”) and each entity to whom the Releasees directly or indirectly
15 distribute or sell the Products including, but not limited to, its downstream distributors, wholesalers,
16 customers, retailers, franchisers, cooperative members, licensors and licensees (“Downstream
17 Releasees”) for any violations arising under Proposition 65 for unwarned exposures to DINP from
18 Products purchased by Michaels prior to the Effective Date, as set forth in the Notice.

19 **4.2 Held’s Individual Release of Claims**

20 Held, in his individual capacity only and *not* in his representative capacity, also provides a
21 release to Michaels, Releasees, and Downstream Releasees which shall be effective as a full and final
22 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
23 attorneys’ fees, damages, losses, claims, liabilities and demands of Held of any nature, character or
24 kind, whether known or unknown, suspected or unsuspected, arising out of alleged or actual
25 exposures to DINP in products purchased by Michaels before the Effective Date.

26 **4.3 Michaels’s Release of Held**

27 Michaels, on its own behalf, and on behalf of its past and current agents, representatives,
28 attorneys, successors, and assignees, hereby waives any and all claims against Held and his
attorneys and other representatives, for any and all actions taken or statements made by Held and

1 his attorneys and other representatives, whether in the course of investigating claims, otherwise
2 seeking to enforce Proposition 65 against it in this matter, or with respect to the Products.

3 **5. COURT APPROVAL**

4 This Consent Judgment is not effective until it is approved and entered by the Court and shall
5 be null and void if, for any reason, it is not approved and entered by the Court within one year after it
6 has been fully executed by the Parties.

7 **6. SEVERABILITY**

8 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
9 provision is held by a court to be unenforceable, the validity of the remaining provisions shall not be
10 adversely affected.

11 **7. GOVERNING LAW**

12 The terms of this Consent Judgment shall be governed by the laws of the State of California
13 and apply within the State of California. In the event that Proposition 65 is repealed, preempted, or is
14 otherwise rendered inapplicable by reason of law generally, or as to the Products, then Michaels may
15 provide written notice to Held of any asserted change in the law, and shall have no further obligations
16 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so affected.
17 Nothing in this Consent Judgment shall be interpreted to relieve Michaels from any obligation to
18 comply with any pertinent state or federal toxics control laws.

19 **8. NOTICE**

20 Unless specified herein, all correspondence and notice required by this Consent Judgment
21 shall be in writing and sent by: (i) personal delivery; (ii) first-class, registered, or certified mail,
22 return receipt requested; or (iii) a recognized overnight courier to the following addressees;

23 **To Michaels:**

24 Heather Morschauser
25 Associate General Counsel
26 Michaels Stores, Inc.
27 8000 Bent Branch Drive
28 Irving TX 75063

with a copy to:

Robert Falk
Morrison & Foerster LLP

1 425 Market Street, 32nd Fl.
2 San Francisco, CA 94105

3 **To Held:**

4 The Chanler Group
5 Attn: Proposition 65 Coordinator
(Held v. Michaels/DINP in Gloves CJ)
6 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

7
8 Any Party may, from time to time, specify in writing to the other, a change of address to which all
9 notices and other communications shall be sent.

10 **9. COUNTERPARTS; FACSIMILE SIGNATURES**

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

14 **10. POST EXECUTION ACTIVITIES**

15 Held agrees to comply with the reporting form requirements referenced in Health and Safety
16 Code section 25249.7(f). The Parties further acknowledge that, pursuant to Health and Safety Code
17 section 25249.7(f), a noticed motion is required to obtain judicial approval of the settlement. In
18 furtherance of obtaining such approval, Held and Michaels agree to mutually employ their best
19 efforts, and those of their counsel, to support the entry of this agreement as judgment, and to obtain
20 judicial approval of their settlement in a timely manner. For purposes of this Section, "best efforts"
21 shall include, at a minimum, cooperating on the drafting and filing of the necessary moving papers,
22 supporting the motion, and appearing at the hearing before the Court.

23 **11. MODIFICATION**

24 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
25 entry of a modified consent judgment by the Court; or (ii) a successful motion or application of any
26 Party, and the entry of a modified consent judgment by the Court. Should any final judgment or
27 administrative action issued prior to December 31, 2016 result in the removal of DINP from the
28

1 Proposition 65 list of chemicals, the injunctive relief obligations set forth in Section 2 shall be
2 rendered void and unenforceable.

3 **12. AUTHORIZATION**

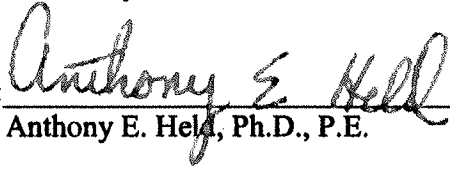
4 The undersigned are authorized to execute this Consent Judgment and have read, understood,
5 and agree to all of the terms and conditions contained herein.

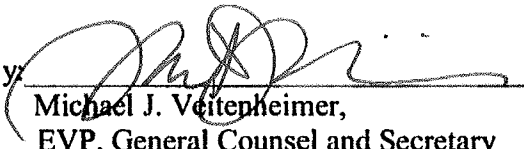
6 **AGREED TO:**

AGREED TO:

7
8 Date: January 4, 2016

Date: 1/14/16

9 By: 
10 Anthony E. Held, Ph.D., P.E.

By: 
11 Michael J. Veitenheimer,
12 EVP, General Counsel and Secretary
13 Michaels Stores, Inc.

11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28