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2 232 E. Blithedale Ave., Suite 210
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4 Attorneys for Plaintiff
SUSAN DAVIA
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FILED

APR 07 2023

**JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: S. Hendryx, Deputy**

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION
11

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 WIRE AND CABLE SPECIALTIES, INC.,
16 BEADALON, THE MICHAELS
COMPANIES, INC., MICHAELS STORES,
17 INC. AND MICHAELS STORES
PROCUREMENT COMPANY, INC. and
18 DOES 1-150,

19 Defendants.
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Case No. CIV2003583

**JUDGMENT ON PROPOSITION 65
SETTLEMENT**

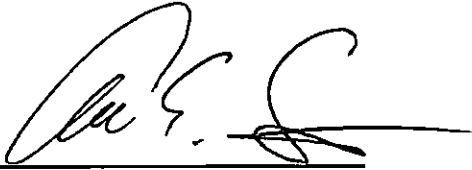
Action Filed: December 15, 2020

Trial Date: None Assigned

1 In the above-entitled action, plaintiff Susan Davia and defendant Wire and Cable Specialties,
2 Inc. having agreed through their respective counsel that a judgment be entered pursuant to the
3 terms of the Consent to Judgment Settlement Agreement entered into by the parties in resolution of
4 this Proposition 65 action, and following the issuance of an order approving the Parties' settlement
5 on this day, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health &
6 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in
7 accordance with the terms of the Consent to Judgment Settlement Agreement attached hereto as
8 Exhibit A. ~~By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement~~
9 ~~under Code of Civil Procedure § 664.6.~~ ^(AES)

10 IT IS SO ORDERED.

11 Dated: 4/7/2023


12 _____
13 Honorable Andrew Sweet
14 Judge of the Superior Court
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SUPERIOR COURT OF THE STATE OF CALIFORNIA

9

FOR THE COUNTY OF MARIN

10

UNLIMITED CIVIL JURISDICTION

11

12

SUSAN DAVIA,

Case No. CIV2003583

13

Plaintiff,

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

14

v.

Action Filed: December 15, 2020
Trial Date: None Assigned

15

WIRE AND CABLE SPECIALTIES, INC.,
16 BEADALON, THE MICHAELS COMPANIES,
INC., MICHAELS STORES, INC. AND
17 MICHAELS STORES PROCUREMENT
18 COMPANY, INC. and DOES 1-150,

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Defendants.

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CONSENT TO JUDGMENT

1 **1.2 Davia**

2 Davia is an individual residing in the State of California who seeks to promote awareness of
3 exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
4 substances contained in consumer products.

5 **1.3 Wire and Cable Specialties, Inc. dba Beadalon, The Michaels Companies, Inc.,**
6 **Michaels Stores, Inc., Michaels Stores Procurement Company, Inc.**

7 Each Beadalon and Michaels is a person in the course of doing business for purposes of the
8 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6
9 *et seq.* ("Proposition 65").

10 **1.4 General Allegations**

11 Davia alleges that Defendants participated in the manufacture, distribution and/or sale, in
12 the State of California, of Beadalon and Artistic Wire brand craft pliers and hand tools made with
13 vinyl components that exposed users to di(2-ethylhexyl)phthalate ("DEHP") without first providing
14 "clear and reasonable warning" under Proposition 65. Pursuant to Proposition 65, DEHP is listed as
15 a carcinogen and reproductive toxin. DEHP shall be referred to hereinafter as the "Listed Chemical."

16 **1.5 Notices of Violation**

17 On February 6, 2020, Davia served W&CS and various public enforcement agencies with a
18 document entitled "60-Day Notice of Violation" that provided public enforcers and the noticed
19 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
20 consumers of the presence of DEHP, a toxic chemical found in the Covered Products (hereafter
21 defined) sold in California (AG Notice 2020-00272). W&CS received this 60-Day Notice of Violation.

22 On December 10, 2020, Davia also served Michaels and various public enforcement agencies
23 with a document entitled "60-Day Notice of Violation" that provided public enforcers and the noticed
24 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
25 consumers of the presence of DEHP, a toxic chemical found in the Covered Products (hereafter
26 defined) sold in California (AG Notice 2020-03365). Michaels received this 60-Day Notice of
27 Violation.

28

1 The February 6, 2020, Notice of Violation to W&CS and December 10, 2020, Notice of Violation
2 to Michaels shall hereafter collectively be referred to as "Notices." W&CS and Michaels each
3 represents that, as of the date it executes this Agreement, it is not aware of any public enforcer that
4 is diligently prosecuting a Proposition 65 enforcement action related to DEHP in the Covered
5 Products, as identified in the Notices.

6 **1.6 Complaint**

7 On December 15, 2020, Davia filed a Complaint in the Superior Court of the State of California
8 for the County of Marin, Case No. CIV2003583, alleging violations by W&CS of Health and Safety
9 Code § 25249.6 based on the alleged exposures to DEHP in the Covered Products (the "Action"). On
10 April 29, 2021, Davia filed a First Amended Complaint in Action CIV2003583 alleging violations by
11 both W&CS and Michaels of Health and Safety Code § 25249.6 based on the alleged exposures to
12 DEHP in the Covered Products.

13 **1.7 No Admission**

14 This Agreement resolves claims that are denied and disputed by Defendants. The Parties
15 enter into this Agreement pursuant to a full, final and binding settlement of any and all claims
16 between the Parties for the purpose of avoiding prolonged litigation. Defendants deny the material
17 factual and legal allegations contained in the Notices, maintain that they did not knowingly or
18 intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable
19 use of the Beadalon brand plier and tool Covered Products (defined hereafter) and further contend
20 that all Covered Products they have manufactured, distributed and/or sold in California have been,
21 and are in, compliance with all applicable laws. Nothing in this Agreement shall be construed as an
22 admission by Defendants of any fact, finding, issue of law, or violation of law, nor shall compliance
23 with this Agreement constitute or be construed as an admission by Defendants of any fact, finding,
24 conclusion, issue of law, or violation of law, all of which are specifically denied by Defendants.
25 However, notwithstanding the foregoing, this section shall not diminish or otherwise affect
26 Defendants' obligations, responsibilities, and duties under this Agreement.

1 **1.8 Consent to Jurisdiction**

2 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
3 Court has jurisdiction over Defendants as to the allegations in the Notices received from Davia, and
4 this Agreement, that venue is proper in County of Marin, and that the Marin County Superior Court
5 has jurisdiction over the Parties in any action to enforce the provisions of this Agreement.

6 **2. DEFINITIONS**

7 **2.1** The term "Covered Product" shall mean all Beadalon and Artistic Wire brand craft
8 pliers and hand tools made with vinyl grips and vinyl cases. Examples of Covered Products, include,
9 but are not limited to, Beadalon Nylon Jaw Plier (JTNJ5), Beadalon Slim Line Round Nose Plier (201A-
10 014), Beadalon Slim Line Bent Chain Nose Plier (201A-013), Beadalon Artistic Wire 5-pc shimmer tool
11 kit (201K-150) and Beadalon Slim Line Semi-Flush Cutter (202A-015).

12 **2.2** The term "Phthalate Free" Covered Product shall mean that each vinyl component of
13 each Covered Product contains less than or equal to 1,000 parts per million ("ppm") of di(2-
14 ethylhexyl) phthalate ("DINP"), dibutyl phthalate ("DBP"), diisononyl phthalate ("DINP"),
15 diisodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP") and butyl benzyl phthalate ("BBP")
16 as determined test results using Environmental Protection Agency ("EPA") testing methodologies
17 3580A and 8270C.

18 **2.3** "Effective Date" shall mean December 5, 2022.

19 **3. INJUNCTIVE-TYPE RELIEF**

20 **3.1 Products No Longer in WCS' Control**

21 No later than the Effective Date, WCS shall send a letter, electronic or otherwise ("Notification
22 Letter") to the national or California purchasing manager for Michaels, Hobby Lobby and any other
23 retail entity to which WCS has sold Covered Products since January 1, 2018, and that WCS reasonably
24 understands either maintains an ecommerce retail website or maintains retail outlets in California.
25 The Notification Letter shall advise the recipient that Covered Products "have been tested for the
26 presence of phthalates and found to contain DEHP, a chemical known to the State of California to
27 cause cancer and birth defects or other reproductive harm," and request that the recipient pull all
28

1 Covered Products from store displays and destroy all pulled Covered Products or return its entire
2 inventory of Covered Products to WCS. Covered Products with packaging that states: (1)
3 "HANDLES VINYL COATED IN USA –PACKAGED IN USA" or (2) "P.O. # XXXX" (confirming
4 that the purchase order was tested and found compliant for phthalates) shall be excluded from this
5 recall. The Notification Letter shall request a response from the recipient within 15 business days,
6 confirming that the letter was received. WCS shall maintain records of all correspondence or other
7 communications generated pursuant to this Section for two years after the Effective Date and shall
8 promptly produce copies of such records upon Davia's written request.

9 3.2 Product Reformulation Commitment

10 3.2.1 No later than the Effective Date, WCS shall provide the Phthalate Free concentration
11 standards of Section 2.2 to its then-current vendors, or manufacturers of any Covered Product and
12 to its vendors of any vinyl material for any Covered Product, and instruct such entities not to
13 incorporate any raw or component materials that do not meet the Phthalate Free concentration
14 standards of Section 2.2 into any Covered Product or to supply any Covered Product to WCS that
15 is not Phthalate Free. WCS shall maintain copies of all vendor correspondence relating to the
16 Phthalate Free concentration standards and shall produce such copies to Davia within fifteen (15)
17 business days of receipt of written request from Davia.

18 3.2.2 After the Effective Date, WCS shall provide the Phthalate Free concentration
19 standards of Section 2.2 to any new vendors or manufacturers of any Covered Product, to its
20 vendors of any vinyl material for any Covered Product and instruct such entities not to incorporate
21 any raw or component materials that do not meet the Phthalate Free concentration standards of
22 Section 2.2 into any Covered Product. Prior to purchase and acquisition of any Covered Product or
23 any vinyl component for any Covered Product from any new vendor, WCS shall obtain a written
24 confirmation and accompanying laboratory test result from the new vendor demonstrating
25 compliance with the Phthalate Free concentration standard in all materials comprising the Covered
26 Product. For every Covered Product WCS manufactures, causes to be manufactured, orders, causes
27 to be ordered or otherwise obtains from a new vendor after the Effective Date, WCS shall maintain
28 copies of all testing of such products demonstrating compliance with this section, shall maintain

1 copies of all vendor correspondence relating to the Phthalate Free concentration standards for two
2 (2) years from the Effective Date and shall produce such copies to Davia within fifteen (15) business
3 days of receipt of written request from Davia. For every Covered Product WCS contends meets the
4 Phthalate Free concentration standards and intends to offer for sale without a warning pursuant to
5 Section 3.3 below, WCS shall maintain copies of all vendor correspondence relating to the Phthalate
6 Free concentration standards for two (2) years from the Effective Date and shall produce such
7 copies to Davia within fifteen (15) business days of receipt of written request from Davia.

8 **3.2.3** As of September 30, 2023, WCS shall permanently discontinue the sale and
9 distribution of Covered Products, manufactured in whole or in part outside of the United States, to
10 any customer with a California address or any retail entity that WCS reasonably understands either
11 maintains an ecommerce retail website or maintains retail outlets in California

12 **3.2.4** As of December 5, 2022, WCS shall not manufacture or cause to be manufactured
13 any Covered Product unless such Covered Product meets the Phthalate Free concentration
14 standards of this Agreement.

15 **3.2.5** As of December 5, 2022, WCS shall implement a quality control testing program to
16 ensure that any Covered Products with vinyl dipped components it obtains for distribution are,
17 indeed, Phthalate Free. As part of this program WCS shall, every six (6) months, select and send for
18 laboratory analysis no less than twenty (20) samples of Covered Product from its inventory of
19 Covered Products regularly obtained for retailer or consumer sale in the United States. These
20 selected samples shall be comprised of at least three (3) different models from each of the Mini,
21 Econo, Slim, Standard and Kit lines of products. For every Covered Product selected for analysis
22 pursuant to this Section 3.2.4, WCS shall document the name, model number, SKU and UPC number
23 of each selected Covered Product sample, the date of manufacture and WCS receipt of each selected
24 sample, the specific chain of custody - from manufacturer to WCS inventory location - for each
25 selected sample and the name and job title of each person involved in the selection of each sample.
26 For every Covered Product selected for analysis pursuant to this Section 3.2.4, WCS shall
27 photograph the entire back and front of the packaging of each sample. For every Covered Product
28 selected for analysis pursuant to this Section 3.2.4, WCS shall deliver the sample, with full chain of

1 custody, to an accredited United States laboratory for scientific analysis for the presence of DEHP,
2 DINP, DBP, DIDP, DnHP and BBP using Environmental Protection Agency ("EPA") testing
3 methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies
4 to determine the presence and measure the quantity of phthalates in solid substances. WCS shall
5 maintain all documentation generated as part of compliance with this Section for five (5) years from
6 the Effective Date and shall produce such copies to Davia within thirty (30) business days of receipt
7 of written request from Davia. WCS shall continue the quality control testing program of Covered
8 Products until such time as use of any vinyl component in or on the Covered Products is
9 discontinued.

10
11 **3.3** Defendants shall maintain records of compliance correspondence, inventory reports
12 or other communication confirming compliance with § 3.2.1 for two (2) years from the Effective
13 Date and shall produce copies of such records upon reasonable written request by Davia.

14 **4. MONETARY PAYMENTS**

15 **4.1 Civil Penalty**

16 As a condition of settlement of all the claims referred to in this Settlement Agreement, W&CS
17 shall cause to be paid a total of \$6,500 in civil penalties in accordance with California Health & Safety
18 Code § 25249.12(c)(1) & (d).

19 **4.2 Augmentation of Penalty Payments**

20 For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon
21 Defendants and their counsel for accurate, good faith reporting to Davia of the nature and amounts
22 of sales activity of the Covered Products during the relevant period. If within nine (9) months of the
23 Effective Date, Davia discovers and presents to Defendants evidence that Defendants materially
24 misrepresented its quantity of sales of Covered Products to California customers prior to execution
25 of this Agreement, and Defendants do not provide Davia with legally competent evidence to dispute
26 this claim, then Defendants shall be liable for an additional penalty amount of \$10,000.00. Davia
27 agrees to provide counsel for Defendants with a written demand for all such additional penalties and
28 attorneys fees under this Section. After service of such demand. Defendants shall have 45 days to

1 either present evidence to counter this claim or agree to the amount of fees and penalties owing by
2 Defendants and submit such payment to Davia in accordance with the method of payment of
3 penalties and fees identified in Section 4.1 and 4.4 of the Agreement. Should this forty-five (45) day
4 period pass without any such resolution between the Parties and payment of such additional
5 penalties and fees, Davia shall be entitled to file a formal legal claim for the additional civil penalties
6 pursuant to this Section and the prevailing party to such action shall be entitled to all reasonable
7 attorney fees and costs relating to such claim.

8 **4.3 Reimbursement of Davia's Fees and Costs**

9 The Parties acknowledge that Davia and her counsel refused to consider any reimbursement
10 of plaintiff's fees or costs until all other terms of the settlement were reached. The Parties then
11 reached an accord on the reimbursement due to Davia and compensation of her counsel under
12 general contract principles and consistent with the private attorney general doctrine codified at
13 California Code of Civil Procedure section 1021.5. Under this accord and these principles, W&CS
14 shall cause to be paid to the Sheffer Law Firm a total of \$75,000 for fees and costs incurred
15 investigating and negotiating a resolution of this matter.

16 **4.4 Payment Procedures**

17 No later than fifteen (15) business days after execution of this Agreement, W&CS shall deliver
18 all settlement checks or funds required by this Agreement to its counsel. Within one (1) week of
19 receipt of the settlement funds, W&CS' counsel shall confirm receipt in writing to plaintiff's counsel
20 and, thereafter, hold W&CS' settlement checks or payment(s) until such time as the Court approves
21 this settlement as contemplated by Section 6. Within five (5) business days of the date plaintiff
22 provides electronic mail notice to counsel for W&CS that the Court has approved this settlement,
23 W&CS' counsel shall deliver the settlement payments to plaintiff's counsel as follows:

24 a civil penalty check payable to "OEHHA" (Memo line "Prop 65 Penalties, 2020-00272, 2020-
25 03365"), in the amount of \$4,875;

26 a civil penalty check payable to "Susan Davia" (Memo line "Prop 65 Penalties, 2020-00272,
27 2020-03365") in the amount of \$1,625; and

28 an attorney fee and cost reimbursement check payable to "Sheffer Law Firm" (Memo line

1 "2020-00272, 2020-03365") in the amount of \$75,000.

2 All Section 4.1 and Section 4.3 civil penalty and attorney fee/cost payments shall be delivered
3 to plaintiff's counsel at the following address:

4 Sheffer Law Firm
5 Attn: Proposition 65 Controller
232 E. Blithedale Avenue, Suite 210
6 Mill Valley, CA 94941

7 All Section 4.2 civil penalty and attorney fee/cost payments, if any, shall be delivered to
8 plaintiff's counsel at the following address on or before the date agreed upon pursuant to that section
9 or as ordered by the Court:

10 Sheffer Law Firm
Attn: Proposition 65 Controller
11 232 E. Blithedale Avenue, Suite 210
Mill Valley, CA 94941

12 W&CS shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts
13 due and owing from it under this Section that are not received by Sheffer Law Firm within two
14 business days of the due date for such payment.

15 **4.5 Issuance of 1099 Forms**

16 After this Agreement has been executed and funds have been transmitted to Davia's
17 counsel at the address set forth in Section 4.4., W&CS shall cause three separate 1099 forms to be
18 issued, as follows:

19 (a) The first 1099 shall be issued to the Office of Environmental Health Hazard
20 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant
21 to Sections 4.1 and 4.2 (if any);

22 (b) The second 1099 shall be issued to Davia in the amount paid pursuant to Sections 4.1
23 and 4.2 (if any), whose address and tax identification number shall be provided to W&CS prior to
24 any payments being due under this Agreement; and

25 (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in the
26 amount paid pursuant to Section 4.3 and 4.2 (if any).

1 **5. RELEASES**

2 **5.1 DAVIA'S RELEASE OF DEFENDANTS**

3 **5.1.1** This settlement agreement is a full, final and binding resolution between Davia and
4 Defendants of any violation of Proposition 65 that was or could have been asserted by Davia on behalf
5 of herself, her representatives or attorneys, against Defendants, their directors, officers, employees,
6 attorneys, parents and each entity to whom Defendants directly or indirectly distributes or sells
7 Covered Products, based on their alleged failure to warn about alleged exposures to the Listed
8 Chemical contained in the Covered Products that were sold by Defendants before the Effective Date.

9 **5.1.2** Davia also provides a general release and waiver which shall be effective as a full and
10 final accord and satisfaction, and as a bar to all claims, actions and causes of action, of any nature,
11 character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of
12 the Notice and the Covered Products to the extent sold or distributed by Defendants prior to the
13 Effective Date, and for all actions taken and statements made (or that could have been taken or made)
14 by Defendants and their attorneys and other representatives in connection with negotiating this
15 Agreement. Davia acknowledges that she is familiar with section 1542 of the California Civil Code,
16 which provides as follows:

17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
18 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
19 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
20 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
21 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
22 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

23 Davia, in her individual capacity expressly waives and relinquishes all rights and benefits
24 that she may have under, or which may be conferred on her by the provisions of Section 1542 of the
25 California Civil Code as well as under any other state or federal statute or common law principle of
26 similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to
27 the released matters. In furtherance of such intention, the release hereby given shall be and remain
28 in effect as a full and complete release notwithstanding the discovery or existence of any such
additional or different claims or facts arising out of the released matters.

1 This Section 5 release shall not release any obligations created by or set forth in this
2 Agreement. The Parties further understand and agree that this Section 5 release shall not extend
3 upstream to any entities, other than W&CS, that manufactured any Covered Product or any
4 component parts thereof, or any distributors or suppliers who sold Covered Products or any
5 component parts thereof to W&CS

6 **5.2 DEFENDANTS RELEASE OF DAVIA**

7 Defendants, on behalf of themselves and their agents, representatives, attorneys, successors,
8 and/or assignees, hereby waive any and all claims against Davia and her attorneys and other
9 representatives, for any and all actions taken or statements made (or those that could have been taken
10 or made) by Davia and her attorneys and other representatives arising out of the subject matter of
11 the Notice and the Covered Products, whether in the course of investigating claims in this matter,
12 otherwise seeking to enforce Proposition 65 against Defendants and Releasees in this matter, or
13 negotiating this Agreement. Defendants acknowledge that it is familiar with Section 1542 of the
14 California Civil Code, which provides as follows:

15
16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
17 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
18 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
19 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
20 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
21 SETTLEMENT WITH THE DEBTOR OR RELEASE PARTY.

22 Defendants expressly waive and relinquishes all rights and benefits which they may have
23 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code
24 as well as under any other state or federal statute or common law principle of similar effect, to the
25 fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters
26 identified in this Section 5.2. In furtherance of such intention, the release hereby given shall be and
27 remain in effect as a full and complete release notwithstanding the discovery or existence of any such
28 additional or different claims or facts arising out of the released matters.

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6. COURT APPROVAL

This Agreement is effective upon execution but must also be approved by the Court. If the Court does not approve this Agreement in its entirety, the Parties shall meet and confer to determine whether to modify the terms of the Agreement and to resubmit it for approval. In meeting and conferring, the Parties agree to negotiate in good faith to reach agreement on any actions reasonably necessary to amend and/or modify this Agreement in order to further the mutual intention of the Parties in entering into this Agreement. The Agreement shall become null and void if, for any reason, it is not approved and entered by the Court, as it is executed, within one year after it has been fully executed by all Parties. The Parties agree that, upon Court approval, a Court judgment shall be entered on the terms of this Agreement.

7. SEVERABILITY

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of other provisions of this Agreement, upon express consent of all Parties, shall not be affected and shall remain in full force and effect.

8. GOVERNING LAW

The terms of this Agreement shall be governed by the laws of the State of California.

9. NOTICES

When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by FedEx (or other tracked delivery service) or electronic mail to the following:

For WCS:

Michael Shields, President
Wire and Cable Specialties, Inc.
440 Highlands Blvd.
Coatesville, PA 19320-5808

For Michaels:

Ashley Buchanan, CEO
The Michaels Companies, Inc., Michaels Stores, Inc.,
Michaels Stores Procurement Company, Inc.
8000 Bent Branch Dr.
Irving TX 75063

1 With a copy to WCS' and Michaels' counsel:
2

3 James Schurz, Esq.
4 Morrison & Foerster LLP
5 425 Market St.
6 San Francisco, CA 94105
7 JSchurz@mofo.com

8 For Davia:

9 Proposition 65 Coordinator
10 Sheffer Law Firm
11 232 E. Blithedale Avenue, Suite 210
12 Mill Valley, CA 94941
13 gregs@sheffer-law.net

14 Any Party may modify the person and address to whom the notice is to be sent by sending
15 each other Party notice by certified mail and/or other verifiable form of written communication.

16 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

17 Davia agrees to comply with the reporting form requirements of California Health & Safety
18 Code §25249.7(f).

19 **11. MODIFICATION**

20 This Agreement may be modified only by written agreement of the Parties or court order.

21 **12. ENTIRE AGREEMENT**

22 This Agreement contains the sole and entire agreement and understanding of the Parties with
23 respect to the entire subject matter hereof, and all prior discussions, negotiations, commitments, and
24 understandings related hereto. No representations, oral or otherwise, express or implied, other than
25 those contained herein have been made or relied on by any Party hereto (other than the sales figures
26 provided to Davia). No other agreements not specifically referred to herein, oral or otherwise, shall
27 be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or
28 termination of this Agreement shall be binding unless executed in writing by the Party to be bound.
No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of

1 any of the other provisions whether or not similar, nor shall such waiver constitute a continuing
2 waiver.

3 **13. ATTORNEY'S FEES**

4 **13.1** In any dispute concerning any matter related to this Agreement, the prevailing Party
5 shall be entitled to recover its costs and expenses, including attorneys' fees and costs. Except as
6 otherwise specifically provided herein, each Party shall bear its own costs and attorney's fees in
7 connection with the Notices. Nothing in this Section shall preclude a Party from seeking an award
8 of sanctions pursuant to law.

9 **14. NEUTRAL CONSTRUCTION**

10 Both Parties and their counsel have participated in the preparation of this Agreement and this
11 Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and
12 modification by the Parties and has been accepted and approved as to its final form by each of the
13 Parties. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be
14 interpreted against any Party as a result of the manner of the preparation of this Agreement. Each
15 Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are
16 to be resolved against the drafting Party should not be employed in the interpretation of this
17 Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654. The
18 Parties further agree that the section headings are for convenience only and shall not affect
19 interpretation of this Agreement.

20 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

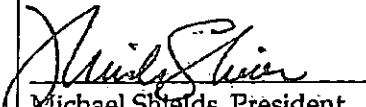

21 This Agreement may be executed in counterparts and by facsimile or portable document
22 format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall
23 constitute one and the same document. Signatures by scanned and e-mailed image or facsimile
24 transmission shall have the same force and effect as original signatures and as an electronic record
25 executed and adopted by a Party with the intent to sign the electronic record pursuant to Civil Code
26 §§ 1633.1 *et seq.*

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16. AUTHORIZATION

Each of the persons signing this agreement represents and warrants that he or she is authorized and has the capacity to execute this Agreement on behalf of the respective Party and has read, understood, and agrees to all the terms and conditions of this Agreement on behalf of such Party.

IT IS SO AGREED

<p>Dated: November <u>11</u>, 2022</p>  <p>Michael Shields, President Wire and Cable Specialties, Inc.</p>	<p>Dated: November <u>14</u>, 2022</p>  <p>Susan Davia</p>
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