

# SETTLEMENT AGREEMENT

## 1. INTRODUCTION

### 1.1 Consumer Advocacy Group, Inc. and the Settling Defendants.

This Settlement Agreement is entered into by and between, Consumer Advocacy Group, Inc. (“CAG” or “Plaintiff”) on the one hand and Wires and Cables Specialties, Inc. (“WCS”), Horizon Group USA, Inc. (“Horizon”) and Michaels Stores, Inc. (“Michaels”) (collectively, the “Settling Defendants”) on the other hand. CAG and the Settling Defendants are collectively referred to herein as the “Parties.” CAG seeks to promote awareness of exposures to toxic chemicals and improve human health by reducing or eliminating hazardous substances contained in consumer products. Each of the Settling Defendants employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code sections 25249.5 *et seq.* (“Proposition 65”).

### 1.2 General Allegations

CAG has alleged that Settling Defendants have manufactured, distributed and/or sold in the State of California, without the warnings allegedly required by Proposition 65, consumer products containing di(2-ethylhexyl)phthalate (“DEHP”). In addition to DEHP, butyl benzyl phthalate (“BBP”), and di-n-butyl phthalate (“DBP”) are listed under Proposition 65 (and are collectively referred to herein as the “Listed Phthalates”).

### 1.3 Product Description

The consumer product categories that are covered by this Settlement Agreement are pliers and other hand-held crafting tools and related tool kits manufactured by or for the Settling

Defendants and which are offered for sale in the State of California (“Covered Products”). These shall include such Covered Products whether they are sold in Settling Defendants’ own names or in the names of private labels. For WCS and Horizon, Covered Products include Covered Products whether sold by them directly or as sold by retailers doing business in California, including, but not limited to as by Michaels. For Michaels, Covered Products include those sold by it and by its Aaron Brothers subsidiary; for Michaels, Covered Products also include artificial fruit and other tabletop decorations, 3-in-1 and other hand tools, wire cutters, suction cups, and flip-flops and other footwear.

#### **1.4 Notices of Violation**

On or about July 17, 2011, CAG served Michaels and all public enforcement agencies required to receive such notices under Proposition 65 with a document entitled “60-Day Notice of Violation” (“Notice”) that provided Michaels and such public enforcers with notice that Michaels was allegedly in violation of California Health and Safety Code section 25249.6 for failing to warn California consumers that certain flip-flops/footwear it sold in California contained and allegedly exposed users to Listed Phthalates. Between August 1, 2011 and August 17, 2011, CAG served Michaels, Horizon and WCS and all public enforcement agencies required to receive such notices under Proposition 65 with a series of additional Notices that provided them with notice that alleged that Michaels, Horizon and WCS were in violation of California Health and Safety Code section 25249.6 for failing to warn California consumers that certain craft and other hand tools they sold in California contained and allegedly exposed users to Listed Phthalates. On or about August 5, 2011, CAG served Michaels and all public enforcement agencies required to receive such notices under Proposition 65 with a Notice that provided Michaels and such public enforcers with notice that alleged that Michaels was in violation of

California Health and Safety Code section 25249.6 for failing to warn California consumers that certain suction cups it sold in California contained and allegedly exposed users to Listed Phthalates. On or about November 3, 2011, CAG served Michaels and all public enforcement agencies required to receive such notices under Proposition 65 with a Notice that provided Michaels and such public enforcers with notice that alleged that Michaels was in violation of California Health and Safety Code section 25249.6 for failing to warn California consumers that certain artificial fruit it sold in California as a tabletop decoration contained and allegedly exposed users to Listed Phthalates. On or about January 19, 2012, another private enforcer of Proposition 65, John Moore, issued a 60-day notice to WCS which again alleged that WCS was in violation of Proposition 65 due to DEHP exposures arising from tools with vinyl grips it manufactures, distributes and/or sells, including an exemplar tool kit item purchased at a Michaels store in California. No public enforcer has filed suit on or otherwise diligently prosecuted the allegations set forth in the Notices or, with respect to WCS, in Mr. Moore's subsequent and overlapping notice.

### **1.5 No Admission**

The Settling Defendants each deny the material factual and legal allegations contained in the Notice and maintain that all products that they have sold and distributed in California, including the Covered Products, have been and are in compliance with all laws, including Proposition 65. Nothing in this Settlement Agreement shall be construed as an admission by any Settling Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this Settlement Agreement constitute or be construed as an admission by any Settling Defendant of any fact, finding, conclusion, issue of law or violation of law, such being specifically denied by each Settling Defendant. However, this section shall not diminish or

otherwise affect the obligations, responsibilities and duties of any Settling Defendant under this Settlement Agreement.

**1.6 Effective Date**

For purposes of this Settlement Agreement, the term “Effective Date” shall mean thirty (30) days following the date this Settlement Agreement is fully executed by the Parties.

**2. INJUNCTIVE RELIEF**

**2.1 Reformulation Standard and Commitments**

For purposes of this Settlement Agreement, the term “Reformulation Standard” means a maximum concentration, by weight, of DEHP, BBP and DBP each, of 0.1% (1,000 parts per million) or less, in each a poly vinyl chloride or other soft plastic, vinyl, or synthetic leather component of a Covered Product that could be touched by a person during reasonably foreseeable use.

**2.1.1** No more than 30 days after the Effective Date, to the extent it has already not done so, each Settling Defendant shall provide the Reformulation Standard to all of its then-current suppliers of the Covered Products and shall instruct each such supplier to use reasonable efforts to provide Covered Products that comply with the Reformulation Standard as soon as possible. In addressing the obligation set forth in the preceding sentence, Settling Defendants shall not employ statements that will encourage a supplier to delay compliance with the Reformulation Standard.

**2.1.2** Commencing on December 15, 2012, a Settling Defendant shall not purchase, import, manufacture, or supply to an unaffiliated third party, any Covered Product (as designated for them on Exhibit A) intended for sale to California consumers if they know it exceeds the Reformulation Standard.

2.1.3 The obligations set forth in Sections 2.1.1 and 2.1.2 above shall be several as to WCS, Horizon, and Michaels and none shall be liable for a breach by the other.

**3. PENALTY PAYMENT/REIMBURSEMENT OF ATTORNEY'S FEES AND COSTS**

3.1.1 Horizon and WCS shall each pay \$1,000 in statutory civil penalties pursuant to California Health and Safety Code section 25249.7(b) and an additional \$4,000 to CAG. Michaels shall pay \$4,000 in statutory civil penalties pursuant to California Health and Safety Code section 25249.7(b) and an additional \$12,000 to CAG. The statutory penalty amount shall be apportioned in accordance with California Health and Safety Code section 25192, with 75% of these funds remitted to the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Consumer Advocacy Group, Inc. as provided by California Health and Safety Code section 25249.12(d). In fulfillment of these obligations, two separate checks shall be issued accordingly and be provided to CAG's counsel on or before fifteen (15) days following the execution of this Settlement Agreement by all parties, at the following address:

Reuben Yeroushalmi  
Yeroushalmi & Associates  
9100 Wilshire Boulevard, Suite 610E  
Beverly Hills, CA 90210

3.1.2 The Parties reached an accord on the compensation due to Plaintiff and its counsel under the private attorney general doctrine, California Code of Civil Procedure section 1021.5, and principles of contract law. Under these legal principles, each Settling Defendant shall reimburse Plaintiff's counsel for fees and costs, incurred as a result of investigating, bringing this matter to their attention, and negotiating a settlement.

Accordingly, Horizon and WCS shall each pay CAG and its counsel \$29,000 for all attorneys' fees, expert and investigation fees, and related costs incurred and they shall have no other liability or responsibility for payments in association with this matter or the matters raised in CAG's notice letters; Michaels shall pay CAG and its counsel \$79,000 for all attorneys' fees, expert and investigation fees, and related costs incurred and shall have no other liability or responsibility for payments in association with this matter or the matters raised in CAG's notice letters. The payment shall be issued in a check made payable to "Yeroushalmi & Associates" and shall be delivered on or before fifteen (15) days following the execution of this Settlement Agreement by all parties, at the following address:

Reuben Yeroushalmi  
Yeroushalmi & Associates  
9100 Wilshire Boulevard, Suite 610E  
Beverly Hills, CA 90210

Yeroushalmi & Associates' tax identification number and a form W-9 shall be furnished to Settling Defendants' counsel by CAG's counsel at least fourteen (14) calendar days before payment is due.

**3.1.3** The obligations set forth in Sections 3.1.1 and 3.1.2 above shall be several as to WCS, Horizon, and Michaels and none shall be liable for a breach by the other.

#### **4. RELEASE OF ALL CLAIMS**

##### **4.1 Release of Settling Defendants and Downstream Customers**

In further consideration of the promises and agreements herein contained, and for the payment to be made pursuant to Section 3 above, Plaintiff on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby releases and waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits,

liabilities, demands, obligations, damages, costs, fines, penalties, losses or expenses (including, but not limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against each Settling Defendant and each of its downstream distributors, wholesalers, licensors, licensees, auctioneers, franchisees, dealers, customers, as well as owners, purchasers, users, parent companies, corporate affiliates, subsidiaries, and their respective officers, directors, attorneys, representatives, shareholders, agents, and employees, and sister and parent entities (collectively "Releasees"). This release and waiver is limited to those Claims that arise under Proposition 65, as such Claims relate to an alleged failure to warn about exposures to or identification of Listed Phthalates contained in the Covered Products. This release does not affect Claims CAG may choose to assert directly against Making Memories, Inc., Adams Manufacturing Corporation, or other vendors of Michaels (except for Horizon, WCS, and vendors that are affiliates of Michaels itself).

In addition, CAG hereby waives any and all rights and benefits which it now has, or in the future may have with respect to Horizon, WCS, or Michaels by virtue of the provisions of California Civil Code section 1542, which provides as follows:

"A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

CAG understands and acknowledges that the significance and consequence of this waiver of California Civil Code section 1542 is that even if CAG hereafter discovers facts in addition to, or different from those which it now knows or believes to be true, it will not be able to make any claim against Horizon, WCS, or Michaels, or with respect to their Covered Products, their

Releasees. Furthermore, CAG acknowledges that it intends these consequences for any such Claims which may exist as of the date of this release but which CAG does not know exist, and which, if known, would materially affect its decision to enter into this settlement, regardless of whether its lack of knowledge is the result of ignorance, oversight, error, negligence, or any other cause.

**4.2 Settling Defendants' Release of Plaintiff**

WCS, Horizon and Michaels each waive any and all claims against Plaintiff and its attorneys and other representatives, for any and all actions taken or statements made by Plaintiff and/or its attorneys and other representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to any other application of Proposition 65 to the Covered Products.

**5. SEVERABILITY**

If, subsequent to the execution of this Settlement Agreement, any of the provisions of this Settlement Agreement are held by any court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected.

**6. GOVERNING LAW**

The terms of this Settlement Agreement shall be governed by the laws of the State of California and shall apply only within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products specifically, then a Settling Defendant may provide written notice to Plaintiff of any asserted change in the law, and shall have no further obligations pursuant to this Settlement Agreement with respect to, and to the extent that, the Covered Products are so affected.

**7. NOTICES**

Unless specified herein, all correspondence and notices required to be provided pursuant to this Settlement Agreement shall be in writing and personally delivered or sent by: (i) first-class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by the other party at the following addresses:

For CAG:

Reuben Yeroushalmi  
Yeroushalmi & Associates  
9100 Wilshire Boulevard, Suite 610E  
Beverly Hills, CA 90210

For WCS:

Douglas Clark  
Vice President  
Wire and Cable Specialties, Inc.  
440 Highlands Blvd.  
Coatsville, PA 19320

For Horizon:

Connie Gennamore  
VP, Regulatory Operations  
Horizon Group USA, Inc.  
76 Stirling Road, Suite 101  
Warren, New Jersey 07059

For Michaels:

Heather Morschauser  
Associate General Counsel  
Michaels Stores, Inc.  
8000 Bent Branch Drive  
Irving TX 75063

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

**8. COUNTERPARTS; FACSIMILE SIGNATURES**

This Settlement Agreement may be executed in counterparts, by a scan suitable for email or by facsimile, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

**9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

Plaintiff agrees to report this settlement to the Office of the California Attorney General (“AG”) as required under the AG’s Proposition 65 regulations.

**10. MODIFICATION**

This Settlement Agreement may be modified only by a written agreement of the Parties, or as the result of an order issued by a court of competent jurisdiction.

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

\_\_\_\_\_  
Signature

*MICHEL SASSOON*

\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
On Behalf of Consumer Advocacy Group

\_\_\_\_\_  
Date

*6-14-12*

**AGREED TO:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
On Behalf of Wires and Cables Specialties, Inc.

\_\_\_\_\_  
Date

**AGREED TO:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
On Behalf of Horizon Group USA, Inc.

\_\_\_\_\_  
Date

**AGREED TO:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
On Behalf of Michaels Stores, Inc.

\_\_\_\_\_  
Date

11. AUTHORIZATION

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

AGREED TO:

  
\_\_\_\_\_  
Signature

MICHEL SASSOUN  
\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
On Behalf of Consumer Advocacy Group

6-14-12  
\_\_\_\_\_  
Date

AGREED TO:

  
\_\_\_\_\_  
Signature

Douglas J. Clarke  
\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
On Behalf of Wires and Cables Specialties, Inc.

6/20/12  
\_\_\_\_\_  
Date

AGREED TO:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
On Behalf of Horizon Group USA, Inc.

\_\_\_\_\_  
Date

AGREED TO:

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
On Behalf of Michaels Stores, Inc.

\_\_\_\_\_  
Date

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

**AGREED TO:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
On Behalf of Consumer Advocacy Group

\_\_\_\_\_  
On Behalf of Wires and Cables Specialties, Inc.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**AGREED TO:**

**AGREED TO:**

*Connie Fata Gennamore*  
\_\_\_\_\_  
Signature

\_\_\_\_\_  
Signature

*Connie Fata Gennamore*  
\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
By (Print Name )

*VP, Global Compliance & Program mgmt.*  
\_\_\_\_\_  
On Behalf of Horizon Group USA, Inc.

\_\_\_\_\_  
On Behalf of Michaels Stores, Inc.

*6/26/12*  
\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

**11. AUTHORIZATION**

The undersigned are authorized to execute this Settlement Agreement on behalf of their respective Parties and have read, understood and agree to all of the terms and conditions of this Settlement Agreement.

**AGREED TO:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
On Behalf of Consumer Advocacy Group

\_\_\_\_\_  
Date

**AGREED TO:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
On Behalf of Wires and Cables Specialties, Inc.

\_\_\_\_\_  
Date

**AGREED TO:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
On Behalf of Horizon Group USA, Inc.

\_\_\_\_\_  
Date

**AGREED TO:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
By (Print Name )

\_\_\_\_\_  
On Behalf of Michaels Stores, Inc.

\_\_\_\_\_  
Date



\_\_\_\_\_  
Michael J. Verten Lerner

SVP

6-15-2012