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4 Attorneys for Plaintiff  
SUSAN DAVIA  
5

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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,  
17 INC., MICHAELS STORES, INC. AND  
18 MICHAELS STORES PROCUREMENT  
COMPANY, INC. and DOES 1-150,

19 Defendants.

Case No. CIV2003583

**CONSENT TO JUDGMENT SETTLEMENT  
AGREEMENT**

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

1 **RECITALS**

2 WHEREAS, Wire and Cable Specialties, Inc. (“WC&S”) manufactures and distributes  
3 Beadalon pliers and hand tools for consumer use;

4 WHEREAS, W&CS represents as material terms to this consent to judgment settlement  
5 agreement (“Agreement” or “Settlement Agreement”) the following:

6 Beginning in 2015, WC&S secured certifications from each of its suppliers that the  
7 suppliers were complying with the phthalate policy issued by W&CS and performing testing to  
8 ensure compliance;

9 Beginning in 2015, each purchase order issued by WC&S confirms the concentrations for  
10 phthalates. Where a vendor cannot provide compliance, WC&S terminates the supplier;

11 In addition to the supply chain management processes, WC&S performed randomly  
12 selected analytical testing of the products received from the vendors received from 2013 through  
13 2017;

14 Following receipt of the Notice of Violation in 2020 from Ms. Davia, WC&S performed a  
15 comprehensive testing program of its Beadalon pliers for phthalates;

16 Beginning in the second quarter 2021, WC&S secured a United States supplier for  
17 application of vinyl grips in hand tools using a non-phthalate mixture; and

18 WC&S has elected to permanently discontinue the sale and distribution of vinyl covered  
19 hand grips and vinyl casings, manufactured in whole or in part outside of the United States, to  
20 any customer with a California address or any retail entity that WCS reasonably understands  
21 either maintains an ecommerce retail website or maintains retail outlets in California.

22 **NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:**

23 **1. INTRODUCTION**

24 **1.1 The Parties**

25 This Agreement is entered into by and between plaintiff Susan Davia (“Davia”), on the one  
26 hand, and defendants Wire and Cable Specialties, Inc. dba Beadalon (“W&CS”) and The Michaels  
27 Companies, Inc., Michaels Stores, Inc. and Michaels Stores Procurement Company, Inc. (“Michaels”) on the other hand, with W&CS and Michaels collectively referred to as “Defendants” and Davia and Defendants collectively referred to as the “Parties.”

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**1.2 Davia**

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

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

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

**1.4 General Allegations**

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

**1.5 Notices of Violation**

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

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

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.

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**1.8 Consent to Jurisdiction**

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

**2. DEFINITIONS**

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

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

**2.3** “Effective Date” shall mean December 5, 2022.

**3. INJUNCTIVE-TYPE RELIEF**

**3.1 Products No Longer in WCS’ Control**

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

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

13 **4. MONETARY PAYMENTS**

14 **4.1 Civil Penalty**

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

18 **4.2 Augmentation of Penalty Payments**

19 For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon  
20 Defendants and their counsel for accurate, good faith reporting to Davia of the nature and amounts  
21 of sales activity of the Covered Products during the relevant period. If within nine (9) months of the  
22 Effective Date, Davia discovers and presents to Defendants evidence that Defendants materially  
23 misrepresented its quantity of sales of Covered Products to California customers prior to execution  
24 of this Agreement, and Defendants do not provide Davia with legally competent evidence to dispute  
25 this claim, then Defendants shall be liable for an additional penalty amount of \$10,000.00. Davia  
26 agrees to provide counsel for Defendants with a written demand for all such additional penalties and  
27 attorneys fees under this Section. After service of such demand. Defendants shall have 45 days to  
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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  
6 232 E. Blithedale Avenue, Suite 210  
7 Mill Valley, CA 94941

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

11 Sheffer Law Firm  
12 Attn: Proposition 65 Controller  
13 232 E. Blithedale Avenue, Suite 210  
14 Mill Valley, CA 94941

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

18 **4.5 Issuance of 1099 Forms**

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

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

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

28 (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in the  
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  
18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT  
19 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR  
20 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
21 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR  
22 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER  
23 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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

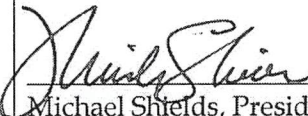
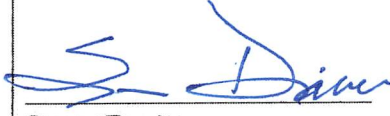
21 This Agreement may be executed in counterparts and by facsimile or portable document  
22 format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall  
23 constitute one and the same document. Signatures by scanned and e-mailed image or facsimile  
24 transmission 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**

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