

**PROPOSITION 65 SETTLEMENT AGREEMENT**  
**(Susan Davia AG Notice 2020-00644)**

**1. INTRODUCTION**

**1.1 The Parties**

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between noticing party Susan Davia (“Davia”) and noticed party Charles Amash Imports, Inc. and Grand Rapids Industrial Products, with Davia, Charles Amash Imports, Inc. and Grand Rapids Industrial Products each referred to as a “Party” and collectively referred to as the “Parties.”

**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 Charles Amash Imports, Inc. and Grand Rapids Industrial Products**

For the sole and exclusive purpose of this agreement and the resolution of the subject claims, each Charles Amash Imports, Inc. and Grand Rapids Industrial Products 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”). Grand Rapids Industrial Products is an assumed or dba name of Charles Amash Imports, Inc. and both shall be hereafter, collectively, referred to as “GRIP”.

**1.4 General Allegations**

Davia alleges that GRIP is responsible for the design, manufacture, distribution and/or sale, in the State of California, of GRIP brand camping forks made with vinyl components that expose users to di(2-ethylhexyl)phthalate (“DEHP”) without first providing “clear and reasonable warning” under Proposition 65. DEHP is listed as a carcinogen and reproductive toxin pursuant to Proposition 65. DEHP shall be referred to hereinafter as the “Listed Chemical.”

### **1.5 Notice of Violation**

On March 12, 2020, Davia served Charles Amash Imports, Inc., Grand Rapids Industrial Products, retailer Camping World 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 2020-00644). This March 12, 2020, Notice of Violation to Charles Amash Imports, Inc., Grand Rapids Industrial Products and retailer Camping World shall hereafter be referred to as “Notice.”

Charles Amash Imports, Inc. and Grand Rapids Industrial Products each represents that, as of the date this Agreement is executed, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to DEHP in the Covered Products, as identified in the Notice.

### **1.6 No Admission**

This Agreement resolves claims that are denied and disputed by GRIP. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. GRIP denies the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered Products and otherwise contends that, all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws and regulations, including Proposition 65. Nothing in this Agreement shall be construed as an admission by GRIP of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by GRIP of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by GRIP. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect GRIP’s obligations, responsibilities, and duties under this Agreement.

### **1.7 Consent to Jurisdiction**

For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over GRIP as to this Agreement, that venue for any action to enforce this Agreement is proper in County of Marin, that this Agreement shall be construed as made pursuant to Code of Civil Procedure Section 664.6 and the Marin County Superior Court shall be considered to have jurisdiction to enforce the provisions of this Agreement until performance in full of the terms of the settlement.

## **2. DEFINITIONS**

**2.1** The term “Covered Product” shall mean all GRIP branded camping forks made with vinyl components (including, but not limited to, 99395 7).

**2.2** The term “Phthalate Free” Covered Products shall mean any accessible component of any Covered Product contains less than or equal to 1,000 parts per million (“ppm”) of DEHP, DINP, di-n-butyl phthalate (“DBP”), di-isodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”) and butyl benzyl phthalate (“BBP”) as determined by a minimum of duplicate quality controlled test results using Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies to determine the presence and measure the quantity of phthalates in solid substances.

**2.3** “Effective Date” shall mean October 1, 2020.

**2.4** “California Customer” shall mean any customer located in California, with a ship to address in California or any retail customer that GRIP reasonably understands or believes maintains any retail outlets in California.

## **3. INJUNCTIVE-TYPE RELIEF**

### **3.1 Products No Longer in GRIP’s Control**

No later than the Effective Date, GRIP shall send a letter, electronic or otherwise (“Notification Letter”) to the president and primary sales contact at Camping World, Inc. and each other retail store located in California that, after March 1, 2018, sold or maintained any inventory of Covered Products.

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 either pull all Covered Products from store displays and return its entire inventory of Covered Products to GRIP or label the Covered Products remaining in inventory for sale in California with a label that complies with Section 3.3. The Notification Letter shall request a response from the recipient within 15 days, confirming that the letter was received. GRIP shall maintain records of all correspondence or other communications generated pursuant to this Section for two years after the Effective Date and shall promptly produce copies of such records upon Davia’s written request.

### **3.2 Product Reformulation Commitment**

**3.2.1** No later than the Effective Date, GRIP shall provide the Phthalate Free concentration standards of Section 2.2 to its then-current vendors or manufacturers of any Covered Product and to its vendors of any vinyl material for any Covered Product, and instruct such entities not to incorporate any raw or component materials that do not meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product or to supply any Covered Product to Beauty Sourcing or 7-Eleven that is not Phthalate Free. GRIP shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards and shall produce such copies to Davia within fifteen (15) days of receipt of written request from Davia.

**3.2.2** After the Effective Date, GRIP shall provide the Phthalate Free concentration standards of Section 2.2 to any new vendors or manufacturers of any Covered Product, to its vendors of any vinyl material for any Covered Product and instruct such entities not to incorporate any raw or component materials that do not meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product. Prior to purchase and acquisition of any Covered Product or any vinyl component for any Covered Product from any new vendor, GRIP shall obtain a written confirmation and accompanying laboratory test result from the new vendor demonstrating compliance with the Phthalate Free

concentration standard in all materials comprising the Covered Product. For every Covered Product GRIP manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from a new vendor after the Effective Date, GRIP shall maintain copies of all testing of such products demonstrating compliance with this section, shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards for two (2) years from the Effective Date and shall produce such copies to Davia within fifteen (15) business days of receipt of written request from Davia. For every Covered Product GRIP contends meets the Phthalate Free concentration standards and intends to offer for sale to any California Customer without a warning pursuant to Section 3.3 below, GRIP shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards for two (2) years from the Effective Date and shall produce such copies to Davia within fifteen (15) business days of receipt of written request from Davia.


**3.2.3** No later than the October 1, 2019, GRIP shall not manufacture or cause to be manufactured any Covered Product unless such Covered Product meets the Phthalate Free concentration standards of this Agreement. No later than the December 1, 2020, GRIP shall not distribute or cause to be distributed to any Camping World retail store in California any Covered Product unless such Covered Product meets the Phthalate Free concentration standards of this Agreement.

### **3.3 Interim Covered Product Warnings**

For any inventory of Covered Products obtained by GRIP prior to the Effective Date that is not confirmed to be Phthalate Free, GRIP shall not distribute, sell or ship, or cause to be distributed, sold or shipped, any such Covered Product to a California Customer unless such Covered Product is shipped with product package label as set forth hereafter.

Each such warning utilized by GRIP for any Covered Product shall be prominently placed either on the product, its labeling or its packaging with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions *before* purchase or use.

Each warning shall either be attached directly to each Covered Product so that it is visible during expected retail display of Covered Products. Each warning shall include the yellow triangle with an internal exclamation point and state:

 **WARNING** [The vinyl materials of ]this product can expose you to chemicals, including DEHP, that are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

or

 **WARNING** Cancer and Reproductive Harm. -  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

### **3.4 Internet Ecommerce Covered Product Warnings**

GRIP hereby verifies that it does not sell any Covered Product directly to consumers through any ecommerce website. As such, GRIP shall have no obligation to provide warnings for any Covered Product on any website owned, operated or controlled by GRIP.

## **4. MONETARY PAYMENTS**

### **4.1 Civil Penalty**

As a condition of settlement of all the claims referred to in this Consent to Judgment, GRIP shall pay a total of \$3,000 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Davia.

### **4.2 Augmentation of Penalty Payments**

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon GRIP for accurate, good faith reporting to Davia of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents evidence to counsel for GRIP that the Covered Products have been distributed in California in sales volumes materially different than

those identified by GRIP prior to execution of this Agreement, and GRIP does not provide Davia with competent and credible evidence to dispute this claim, then GRIP shall be liable for an additional penalty amount of \$10,000.00. Davia represents that she does not presently have such information. GRIP shall also be liable for any reasonable, additional attorney fees expended by Davia, up to \$10,000 or as determined by the Court, in discovering such additional retailers or sales. Davia agrees to provide counsel for GRIP with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, GRIP shall have thirty (30) days to either present evidence to counter this claim or to agree to the amount of fees and penalties owing by GRIP and submit such payment to Davia in accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim for the additional civil penalties pursuant to this Section and the prevailing party to such action shall be entitled to all reasonable attorney fees and costs relating to such claim.

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

The Parties acknowledge that Davia and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. GRIP expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Davia and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, GRIP shall pay Davia's counsel the amount of \$13,500 for fees and costs incurred investigating, litigating and enforcing this matter.

#### **4.4 Payment Procedures**

GRIP shall satisfy their obligation to pay civil penalties pursuant to Section 4.1 by delivery of a

civil penalty check payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2020-00644"), in the amount of \$750 and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2020-00644") in the amount of \$2,250. Davia shall be responsible for delivering to the California Office of Environmental Health Hazard Assessment the civil penalty check payable to OEHHA. All Section 4.1 civil penalty payments shall be delivered no later than September 30, 2020.

GRIP shall satisfy their obligation to pay attorney fees and costs pursuant to Section 4.3 of this Agreement by delivery of checks payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2020-00644") as follows: \$4,500 delivered no later than October 31, 2020; \$4,500 delivered no later than November 31, 2020; and \$4,500 delivered no later than December 31, 2020.

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

Sheffer Law Firm  
Attn: Proposition 65 Controller  
81 Throckmorton Ave., Suite 202  
Mill Valley, CA 94941

The monetary terms of this Agreement represent a compromise by Ms. Davia who has offered GRIP a significant fee discount in an effort to secure prompt injunctive-type relief. GRIP shall be liable for an additional fee of \$1,000 and payment of interest, at a rate of 10% simple interest, for *each* payment due and owing from it under this Section that is not received by Sheffer Law Firm by the due date for such payment.

While the obligations of this agreement are binding upon execution, the Release of GRIP shall not become effective until after all monetary payments have been made by GRIP and all funds have cleared.

GRIP shall also pay any augmented civil penalties pursuant to Section 4.2, on or before the date agreed upon by the Parties or ordered by the Court pursuant to Section 4.2, with civil penalty checks payable to "OEHHA" (Memo line "Prop 65 Penalties, 2020-00644") and "Susan Davia" (Memo line "Prop 65 Penalties, 2020-00644") in the amount agreed to by the Parties or ordered by the Court pursuant to Section 4.2 and as divided pursuant to California Health & Safety Code § 25249.12(c)(1) & (d).



GRIP shall also pay attorney fees and costs pursuant to Section 4.2, on or before the date agreed upon by the Parties or ordered by the Court pursuant to Section 4.2, with a check payable to "Sheffer Law Firm" (Memo line "2020-00644") in the amount agreed upon by the Parties or ordered by the Court pursuant to Section 4.2.

All Section 4.2 payments shall be delivered to plaintiff's counsel at the following address:

Sheffer Law Firm  
Attn: Proposition 65 Controller  
81 Throckmorton Ave., Suite 202  
Mill Valley, CA 94941

GRIP shall also be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing from it under Section 4.2 that are not received by Sheffer Law Firm within ten (10) business days of the due date for such payment.

#### **4.5 Issuance of 1099 Forms**

After this Agreement has been executed and the settlement funds have been transmitted to Davia's counsel, GRIP shall issue three separate 1099 forms, as follows:

- (a) issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Sections 4.1 and 4.2;
- (b) issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2, whose address and tax identification number shall be furnished upon request; and
- (c) issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section 4.2 and 4.3.

## **5. RELEASES**

### **5.1 DAVIA'S RELEASE OF GRIP**

5.1.1 This settlement agreement is a full, final and binding resolution between Davia, and GRIP of any violation of Proposition 65 that was or could have been asserted by Davia, individually

and on behalf of herself and her past and current representatives, agents, attorneys, successors and/or assigns ("Releasers") against GRIP and each of their directors, officers, employees, attorneys, agents, parents, and subsidiaries, and each entity to which GRIP directly distributes or sells Covered Products, including, but not limited to Camping World ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Covered Products that were manufactured, distributed, sold or offered for sale to a California customer before the Effective Date. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 by GRIP with regard to the alleged or actual failure to warn about exposure to DEHP from Covered Products manufactured, sold or distributed for sale after the Effective Date.

5.1.2 In further consideration of the promises and agreements herein contained, and for so long as GRIP remains in compliance with the terms of this Agreement, Davia on behalf of herself, her past and current representatives, agents, attorneys, successors and/or assigns hereby waives all Davia's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Davia may have, 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,-- limited to and arising under Proposition 65 with respect to the DEHP in the Covered Products manufactured, distributed, sold and/or offered for sale by GRIP before the Effective Date (collectively "claims"), against GRIP and Releasees.

5.1.3 Davia also, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Davia, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by GRIP or Releasees

before the Effective Date. Davia acknowledges that she is familiar with section 1542 of the California civil code, which provides as follows:

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

Davia, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns expressly waives and relinquishes any and all rights and benefits that she may have under, or which may be conferred on her by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, excepting Section 4.2, 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.

5.1.4 This section 5.1 release shall not extend upstream to any entities, other than GRIP, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the covered products or any component parts thereof to GRIP.

## **5.2 GRIP's Release of Davia**

The Release by Davia is mutual. GRIP, each on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Davia and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Davia and her attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products. GRIP each acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

GRIP expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to 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.

#### **6. SEVERABILITY**

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of the enforceable provisions remaining, after express agreement of the Parties, shall not be adversely affected, unless the Court finds that any unenforceable provision is not severable from the remainder of the Agreement.

#### **7. GOVERNING LAW**

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

#### **8. NOTICES**

When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by certified mail or electronic mail to the following:

For GRIP:

Kevin VanderWoude  
Grand Rapids Industrial Products Legal Dept  
4628 Amash Industrial Drive  
Wayland, MI 49348

koby@gripontools.net

For Davia to:

Proposition 65 Coordinator  
Sheffer Law Firm  
81 Throckmorton Ave., Suite 202  
Mill Valley, CA 94941

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

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

Davia agrees to comply with the reporting form requirements referenced, in California Health & Safety Code §25249.7(f).

**10. MODIFICATION**

This Agreement may be modified only by written agreement of the Parties.

**11. ENTIRE AGREEMENT**

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or 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 any of the other provisions whether or not similar, nor shall such waiver constitute a continuing waiver

**12. ATTORNEY'S FEES**

**12.1** Should either Party prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, that Party shall be entitled to its reasonable

attorney fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. §§ 1021 and 1021.5.

**12.2** Except as otherwise specifically provided herein, each Party shall bear its own costs and attorney's fees in connection with the Notice.

**12.3** Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

### **13. NEUTRAL CONSTRUCTION**

Both Parties and their counsel have participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.

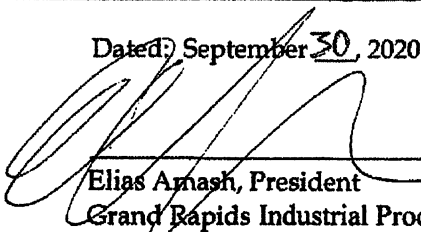
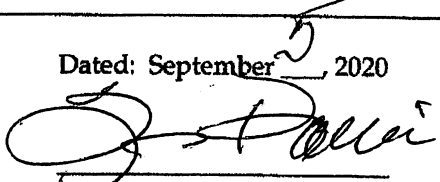
### **14. COUNTERPARTS, FACSIMILE SIGNATURES**

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

### **15. AUTHORIZATION**

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

**IT IS SO AGREED**

<p>Dated: September <u>30</u>, 2020</p>  <p>Elias Amash, President Grand Rapids Industrial Products</p>	<p>Dated: September <u>5</u>, 2020</p>  <p>Susan Davia</p>
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