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SHEFFER LAW FIRM
2 81 Throckmorton Ave., Suite 202
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3 Telephone: 415.388.0911
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4 Attorneys for Plaintiff
5 SUSAN DAVIA

FILED

DEC 14 2016

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF MARIN
9 UNLIMITED CIVIL JURISDICTION

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11
12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 BPS DIRECT, LLC, BASS PRO OUTDOOR
16 WORLD, LLC and DOES 1-150,

17 Defendants.

Case No. CIV1600503

**JUDGMENT ON PROPOSITION 65
SETTLEMENT**

Case Filed: February 9, 2016
Trail Date: None Assigned

1 In the above-entitled action, Plaintiff Susan Davia and Defendants BPS Direct, LLC, Bass
2 Pro Outdoor World, LLC, having agreed through their respective counsel that a judgment be
3 entered pursuant to the terms of the Settlement Agreement and Consent to Judgment entered
4 into by the parties in resolution of this Proposition 65 action, and following the issuance of an
5 order approving the Parties' Settlement Agreement and Stipulation to Judgment on this day, IT
6 IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety Code §
7 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance with
8 the terms of the Stipulation to Judgment attached hereto as Exhibit A. By stipulation of the
9 parties, the Court will retain jurisdiction to enforce the settlement under Code of Civil Procedure
10 § 664.6.

11 **IT IS SO ORDERED.**

12 Dated: DEC 14 2016

ROY CHERNUS

Honorable Roy Chernus
Judge Of The Superior Court

EXHIBIT A

1 Gregory M. Sheffer, State Bar No. 173124
SHEFFER LAW FIRM
2 81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941
3 Telephone: 415.388.0911
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4 Attorneys for Plaintiff
5 SUSAN DAVIA

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF MARIN
9 UNLIMITED CIVIL JURISDICTION

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11 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 BPS DIRECT, LLC, BASS PRO OUTDOOR
WORLD, LLC and DOES 1-150,

15 Defendants.
16

Case No. CIV 1600503

**CONSENT TO JUDGMENT AS TO
DEFENDANTS BASS PRO OUTDOOR
WORLD, LLC AND BPS DIRECT, LLC**

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Settlement Agreement (“Agreement”) is entered into by and between Plaintiff Susan
4 Davia, (“Davia” or “Plaintiff”) and defendants BPS Direct, LLC and Bass Pro Outdoor World, LLC,
5 doing business as Bass Pro Shops, (hereafter collectively referred to as “Bass Pro”) with Bass Pro
6 referred to as “Settling Defendant” and Davia and Bass Pro collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Settling Defendant**

12 BPS Direct, LLC and Bass Pro Outdoor World, LLC each employs 10 or more persons and
13 each is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic
14 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Davia alleges that Bass Pro manufactured, distributed and/or sold, in the State of California,
17 certain types of PVC rainwear and PVC decoy cord comprised of or made with components that
18 exposed users to DEHP and DINP without first providing “clear and reasonable warning” under
19 Proposition 65.

20 DEHP is listed as a reproductive and developmental toxicant pursuant to Proposition 65.
21 DINP is listed as a carcinogen pursuant to Proposition 65. Where appropriate, both DEHP and DINP
22 shall be hereafter collectively referred to as “Listed Chemical.”

23 **1.5 Notices of Violation**

24 On October 1, 2015, and October 29, 2015, Davia served BPS Direct, LLC and various public
25 enforcement agencies with valid and compliant Proposition 65 sixty-day notices of violation, together
26 with valid, requisite Certificates of Merit that provided public enforcers and these entities with notice
27 of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence
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1 of the DEHP in and on their PVC rainwear products sold in California. The October 1, 2015, and
2 October 29, 2015, notices of violation regarding the PVC rainwear products shall hereafter be referred
3 to, collectively, as "Notice 1".

4 On October 20, 2015, Davia served BPS Direct, LLC and various public enforcement agencies
5 with another valid and compliant Proposition 65 sixty-day notice of violation, together with valid,
6 requisite Certificates of Merit that provided public enforcers and these entities with notice of alleged
7 violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of the
8 DINP in and on their PVC decoy cord products sold in California. On March 22, 2016, Davia served
9 BPS Direct, LLC and various public enforcement agencies with another valid and compliant
10 Proposition 65 sixty-day notice of violation, together with valid, requisite Certificates of Merit that
11 provided public enforcers and these entities with notice of alleged violations of Health & Safety Code
12 § 25249.6 for failing to warn consumers of the presence of the DEHP and DINP in and on their PVC
13 decoy cord products sold in California. The October 20, 2016, and March 22, 2016, notices of violation
14 regarding PVC Decoy Cord products shall hereafter be referred to, collectively, as "Notice 2".

15 On June 7, 2016, Davia served Bass Pro Outdoor World, LLC, BPS Direct, LLC and various
16 public enforcement agencies with another valid and compliant Supplemental Proposition 65 sixty-
17 day notice of violation, together with a valid, requisite Certificate of Merit that provided public
18 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6 for
19 failing to warn consumers of the presence of the DEHP and DINP in and on their PVC rainwear
20 products and PVC decoy cord products sold in California. The June 7, 2016, notice of violation shall
21 be referred to as Notice 3.

22 BPS Direct, LLC received Notice 1, Notice 2 and Notice 3. Bass Pro Outdoor World, LLC
23 received Notice 3. Bass Pro Outdoor World, LLC and BPS Direct, LLC each represents that, as of the
24 date it executes this Agreement, it believes that no public enforcer is diligently prosecuting a
25 Proposition 65 enforcement action related to the Listed Chemical in the covered products, as
26 identified in Notice 1, Notice 2 and Notice 3.

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1.6 Complaint

On February 9, 2016, Davia, acting, in the interest of the general public in California, filed a Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV 1600503, alleging violations by Bass Pro Shops, BPS Direct, LLC and Does 1-150 of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged exposures to the Listed Chemical contained in certain PVC rainwear and PVC decoy cord products (the “Action”).

As part of, and upon execution of, this Agreement, the Parties stipulate and agree that the Complaint shall and will be amended to include the Parties, recitals, and allegations against Bass Pro Outdoor World, LLC and BPS Direct, LLC of Davia’s claims relating to the Listed Chemical in the PVC Rainwear and Decoy Cord products as identified in Notice 1, Notice 2 and Notice 3.

The Parties agree that this stipulated First Amended Complaint (“FAC”) shall be presented for approval to the Court as part of and in conjunction with the motion to approve this Agreement. Settling Defendant stipulates and agrees to waive service of the FAC except as part of the anticipated motion to approve this settlement and approve the FAC. Settling Defendant further stipulates to waive any response to such FAC and stipulates that the FAC shall be deemed at issue as to Settling Defendant upon approval of the FAC.

1.7 No Admission

This Agreement resolves claims that are denied and disputed by Settling Defendant. 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. Settling Defendant denies the material factual and legal allegations contained in the Notices and Action, 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 Notice 1, Notice 2 and Notice 3 products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission by Settling Defendant 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 Settling Defendant of any fact, finding,

1 conclusion, issue of law, or violation of law, such being specifically denied by Settling Defendant.
2 However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Settling
3 Defendant's obligations, responsibilities, and duties under this Agreement.

4 **1.8 Consent to Jurisdiction**

5 For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction over
6 Bass Pro Outdoor World, LLC and BPS Direct, LLC as to the allegations contained in the Complaint,
7 that venue is proper in County of Marin, and that this Court has jurisdiction to enter and enforce the
8 provisions of this Agreement. As an express part of this Agreement, pursuant to C.C.P. §664.6 the
9 Court in which this action was filed shall retain jurisdiction over the Parties to enforce the settlement
10 until performance in full of the terms of the settlement.

11 **2. DEFINITIONS**

12 **2.1** The term "Complaint" shall mean the February 9, 2016, Complaint and the FAC as it
13 will be amended as part of this settlement.

14 **2.2** The term "Covered Product 1" means any PVC rainwear product that Settling
15 Defendant manufactures, distributes, and/or offers for sale including, but not limited to, Bass Pro
16 Shops Adult and Youth PVC Rainsuits and Ponchos. The term "Covered Product 2" means any PVC
17 decoy cord that Settling Defendant manufactures, distributes, and/or offers for sale including, but
18 not limited to, Red Head PVC Decoy Cord. Covered Product 1 and Covered Product 2 shall be
19 collectively referred to as "Covered Products."

20 **2.3** The term "Effective Date" shall mean April 15, 2016.

21 **2.4** The term "DEHP Free" Covered Products shall mean each component of any Covered
22 Product 1 containing less than or equal to 1,000 parts per million ("ppm") of DEHP as determined by
23 a minimum of duplicate quality controlled test results using Environmental Protection Agency
24 ("EPA") testing methodologies 3580A and 8270C. The term "DINP Free" Covered Products shall
25 mean each component of any Covered Product 2 containing less than or equal to 1,000 parts per
26 million ("ppm") of DINP as determined by a minimum of duplicate quality controlled test results
27 using Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.

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1 **2.5** “Manufactured” and “manufactures” have the meaning defined in Section 3(a)(10) of
2 the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)], as amended from time to time.

3 **3. NON-MONETARY RELIEF**

4 **3.1 Formulation Commitment**

5 3.1.1 No later than July 1, 2016, Settling Defendant shall not sell to a purchaser located in
6 California , or sell from any California BPS retail outlet, any Covered Product 1 that is not DEHP Free
7 and DINP Free.

8 3.1.2 No later than July 1, 2016, Settling Defendant shall not sell to a purchaser located in
9 California, or sell from any California BPS retail outlet, any Covered Product 2 that is not DEHP Free
10 and DINP Free.

11 3.1.3 After July 1, 2016, for every Covered Product 1 and Covered Product 2 sold to a
12 purchaser located in California or sold from any California BPS retail outlet, Settling Defendant shall
13 maintain copies of all testing of such products demonstrating compliance with this section for a
14 period of three (3) years following receipt of such test results, shall maintain copies of all vendor
15 correspondence relating to the DEHP and DINP concentration standards for a period of three (3)
16 years following receipt of such correspondence and shall produce such copies to Davia within fifteen
17 (15) days of receipt of written request from Davia.

18 **3.2 Previously Obtained or Distributed Covered Products.**

19 **3.2.1 Existing Product Inventory**

20 3.2.2 Bass Pro certifies that it has investigated its California retail store inventory of Covered
21 Product 1 and Covered Product 2 and certifies as a material term of this agreement that all such
22 inventory has been withdrawn from Bass Pro Shop California retail stores, that the SKUS of Covered
23 Product 1 and Covered Product 2 have been blocked from internet sale to California and that all sales
24 of Covered Product 1 and Covered Product 2 have therefore been discontinued in California. From
25 the Effective Date forward, Bass Pro shall not sell any Covered Product 1 in California that is not
26 DEHP Free and DINP Free and shall not sell any Covered Product 2 in California that is not DEHP
27 Free and DINP Free. Settling Defendant shall maintain records of its direction and efforts to
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1 withdraw Covered Product 1 and Covered Product 2 from sale in California for a period of three (3)
2 years following receipt of such correspondence and shall produce such copies to Davia within fifteen
3 (15) days of receipt of written request from Davia.

4 **4. MONETARY PAYMENTS**

5 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

6 As a condition of settlement of all the claims referred to in this Consent to Judgment, Bass Pro
7 Outdoor World, LLC shall pay a total of \$17,500 in civil penalties in accordance with California
8 Health & Safety Code § 25249.12(c)(1) & (d).

9 **4.2 Augmentation of Penalty Payments**

10 For purposes of the penalty assessment under this Agreement, Plaintiff is relying entirely
11 upon Settling Defendant and its counsel for accurate, good faith reporting to Plaintiff of the nature
12 and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Plaintiff
13 discovers and presents to Settling Defendant evidence that the Covered Products have been
14 distributed by Settling Defendant in sales volumes materially different than those identified by
15 Settling Defendant prior to execution of this Agreement, then such misrepresenting Bass Pro Outdoor
16 World, LLC shall be liable for an additional penalty amount of \$150 per quantity of Covered Products
17 sold prior to execution of this Agreement but not identified by Settling Defendant to Plaintiff. Bass
18 Pro Outdoor World, LLC shall also be liable for any reasonable, additional attorney fees expended
19 by Plaintiff in discovering applicable additional retailers or sales for Settling Defendant, up to a
20 maximum of \$10,000 or other amount approved by the Court. Plaintiff agrees to provide such
21 misrepresenting Settling Defendant with a written demand for all such additional penalties and
22 attorney fees under this Section. After service of such demand, Settling Defendant shall have thirty
23 (30) days to agree to the amount of fees and penalties owing and submit such payment to Plaintiff in
24 accordance with the method of payment of penalties and fees identified in Sections 4.4. Should this
25 thirty (30) day period pass without any such resolution between the Parties and payment of such
26 additional penalties and fees, Plaintiff shall be entitled to file a formal legal claim for additional civil
27 penalties pursuant to this Section and shall be entitled to seek all reasonable attorney fees and costs

1 relating to such claim.

2 **4.3 Reimbursement of Plaintiff's Fees and Costs**

3 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
4 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
5 issue to be resolved after the material terms of the Agreement had been settled. Settling Defendant
6 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
7 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
8 Davia and her counsel under general contract principles and the private attorney general doctrine
9 codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter,
10 except fees that may be incurred on appeal. Under these legal principles, Bass Pro Outdoor World,
11 LLC shall pay the amount of \$52,000 for fees and costs incurred investigating, litigating and enforcing
12 this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and
13 obtaining the Court's approval of this Agreement in the public interest.

14 **4.4 Payment Timing; Payments Held In Trust**

15 Bass Pro Outdoor World, LLC shall deliver all settlement payment funds required by this
16 Consent Judgment to its counsel within ten (10) business days of the date that this Agreement is fully
17 executed by the Parties. Settling Defendant's counsel shall confirm receipt of settlement funds in
18 writing to Plaintiff's counsel and, thereafter, hold the amounts paid in trust until such time as the
19 Court approves this settlement contemplated by Section 7.

20 Within seven (7) business days of the date the Court approves the settlement, Settling
21 Defendant's counsel shall deliver the settlement payments it has held in trust to Plaintiff's counsel as
22 follows:

- 23 1. a civil penalty check in the amount of \$13,125 payable to "OEHHA" (EIN: 68-0284486,
24 Memo line "Prop 65 Penalties, 2016-00540");
- 25 2. a civil penalty check in the amount of \$4,375 payable to "Susan Davia" (EIN: to be
26 supplied upon request), Memo line "Prop 65 Penalties, 2016-00540"); and
- 27 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the amount
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1 of \$52,000 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2016-00540")

2 Bass Pro Outdoor World, LLC shall deliver all Section 4.2 additional civil penalty and attorney
3 fee/cost payments by delivering such Section 4.2 settlement payments, on or before the date agreed
4 upon pursuant to Section 4.2 or ordered by the Court, to Plaintiff's counsel as follows:

5 1. a civil penalty check in the amount of 75% of the penalty agreed upon or ordered by
6 the Court pursuant to Section 4.2 payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65
7 Penalties, 2016-00540");

8 2. a civil penalty check in the amount of 25% of the penalty agreed upon or ordered by
9 the Court pursuant to Section 4.2 payable to "Susan Davia" (EIN: to be supplied upon request),
10 Memo line "Prop 65 Penalties, 2016-00540"); and

11 3. An attorney fee and cost reimbursement check, in the amount agreed upon or ordered
12 by the Court pursuant to Section 4.2 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo
13 line "2016-00540")

14 All penalty and fee/cost payments shall be delivered to the Sheffer Law Firm at the following
15 address:

16 Sheffer Law Firm
17 Attn: Proposition 65 Controller
18 81 Throckmorton Ave., Suite 202
19 Mill Valley, CA 94941.

20 Settling Defendant shall be liable for payment of interest, at a rate of 10% simple interest, for
21 all amounts due and owing from it under this Section that are not received by Sheffer Law Firm
22 within seven (7) business days of the due date for such payment.

23 5. CLAIMS COVERED AND RELEASE

24 5.1 Davia's Releases of Settling Defendant

25 5.1.1 This Agreement is a full, final, and binding resolution between Davia, on behalf of
26 herself, her past and current agents, representatives, attorneys, successors, and/or assignees, and in
27 the interest of the general public, and Bass Pro and each of their officers, directors, shareholders,
28 employees, agents, parent companies, subsidiaries, divisions, affiliates, customers, attorneys,

1 successors, licensors and assigns (“Defendant Releasees”) of any violation of Proposition 65 that has
2 been or could have been asserted against Defendant Releasees regarding the failure to warn about
3 exposure to any Listed Chemical arising in connection with any Covered Product 1 or Covered
4 Product 2 manufactured, sourced, distributed, or sold by Defendant Releasees prior to the Effective
5 Date. Settling Defendant’s compliance with this Agreement shall constitute compliance with
6 Proposition 65 with respect to the Listed Chemical in the Covered Products after the Effective Date.

7 5.1.2 Davia, on behalf of herself, her past and current agents, representatives, attorneys,
8 successors, and/or assignees, and in the interest of the general public, hereby waives with respect to
9 Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action
10 and releases Defendant Releasees from all claims for violations of Proposition 65 with respect to the
11 Listed Chemical in the Covered Products manufactured, distributed, sold and/or offered for sale by
12 Defendant Releasees as set forth in the 60-Day Notices of Violation identified in Section 1.5 of this
13 Agreement.

14 5.1.3 Davia, on behalf of herself, her past and current agents, representatives, attorneys,
15 successors, and/or assignees hereby waives all rights to institute or participate in, directly or
16 indirectly, any form of legal action and releases all claims against Wohali Outdoors under Proposition
17 65 as such claims relate to Wohali Outdoors’ failure to warn about DEHP or DINP in the sale of
18 Covered Product 1 to Settling Defendant.

19 5.1.4 The Parties further understand and agree that, with the exception of vendor Wohali
20 Outdoors and their release for sales of Covered Product 1 to Settling Defendant, this Section 5.1
21 release shall not extend upstream to any entities that manufactured any Covered Products or any
22 component parts thereof, or any suppliers who sold any Covered Products to Settling Defendant.

23 5.1.5 Upon court approval of the Agreement, the Parties waive their respective rights to a
24 hearing or trial on the allegations of the Complaint.

25 **5.2 Settling Defendant’s Release of Davia**

26 5.2.1 Settling Defendant waives any and all claims against Davia, her attorneys, and other
27 representatives for any and all actions taken or statements made (or those that could have been taken
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1 or made) by Davia and her attorneys and other representatives, whether in the course of investigating
2 claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with
3 respect to the Covered Products.

4 5.2.2 Settling Defendant also provides a general release herein which shall be effective as a
5 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
6 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Settling Defendant of
7 any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the
8 subject matter of the Action. Settling Defendant acknowledges that it is familiar with Section 1542 of
9 the California Civil Code, which provides as follows:

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

13 Settling Defendant expressly waives and relinquishes any and all rights and benefits that it
14 may have under, or which may be conferred on it by the provisions of Section 1542 of the California
15 Civil Code as well as under any other state or federal statute or common law principle of similar
16 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released
17 matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a
18 full and complete release notwithstanding the discovery or existence of any such additional or
19 different claims or facts arising out of the released matters.

20 **6. SEVERABILITY**

21 If, subsequent to court approval of this Agreement, any of the provisions of this Agreement
22 are determined by a court to be unenforceable, the validity of the enforceable provisions remaining
23 shall not be adversely affected, unless the Court finds that any unenforceable provision is not
24 severable from the remainder of the Agreement.

25 **7. COURT APPROVAL**

26 This Agreement is effective upon execution but must also be approved by the Court. If this
27 Agreement is not approved by the Court in its entirety, the Parties shall meet and confer to determine
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1 whether to modify the terms of the Agreement and to resubmit it for approval. In meeting and
2 conferring, the Parties agree to undertake any actions reasonably necessary to amend and/or modify
3 this Agreement in order to further the mutual intention of the Parties in entering into this Agreement.

4 The Agreement shall become null and void if, for any reason, it is not approved and entered
5 by the Court, as it is executed, within one year after it has been fully executed by all Parties.

6 If this Agreement is not entered by the Court, and the Parties have exhausted their meet and
7 confer efforts pursuant to this Section 7, upon 15 days written notice, the law firm holding Settling
8 Defendant's funds in trust shall refund any and all payments made into its trust account by Settling
9 Defendant as requested.

10 **8. GOVERNING LAW**

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

12 **9. NOTICES**

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

15 For Bass Pro Shops and BPS Direct, LLC to:

16 James Hagale, President
17 BPS Direct, LLC
18 Bass Pro Shops
19 2500 East Kearney
20 Springfield, MO 65898

21 With copy to their counsel at:

22 Mark E. Elliott.
23 Pillsbury Winthrop Shaw Pittman LLP
24 725 South Figueroa Street, Suite 2800
25 Los Angeles, CA 90017-5406

26 For Davia to:

27 Proposition 65 Coordinator
28 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.

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

2 Davia agrees to comply with the reporting form requirements referenced, in California Health
3 & Safety Code §25249.7(f) and to file a motion for approval of this Agreement.

4 **11. MODIFICATION**

5 This Agreement may be modified only: (1) by written agreement of the Parties; or (2) upon a
6 successful motion of any party and approval of a modified Agreement by the Court.

7 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

8 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
9 is required to obtain judicial approval of this Agreement. In furtherance of obtaining such approval,
10 Davia and Settling Defendant, and their respective counsel, agree to mutually employ their best
11 efforts to support the entry of this Agreement as a settlement agreement and obtain approval of the
12 Agreement - sufficient to render an order approving this agreement - by the Court in a timely manner.
13 Any effort by Settling Defendant to impede judicial approval of this Agreement shall subject such
14 impeding party to liability for attorney fees and costs incurred by plaintiff or her counsel in their
15 efforts to meet or oppose Settling Defendant's impeding conduct.

16 **13. ENTIRE AGREEMENT**

17 This Settlement contains the sole and entire agreement and understanding of the Parties with
18 respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
19 commitments, and understandings related hereto. No representations, oral or otherwise, express or
20 implied, other than those contained herein have been made by any party hereto. No other
21 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
22 any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall
23 be binding unless executed in writing by the party to be bound. No waiver of any of the provisions
24 of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether
25 or not similar, nor shall such waiver constitute a continuing waiver

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1 **14. ATTORNEY'S FEES**

2 **14.1** Should Davia prevail on any motion, application for order to show cause or other
3 proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable attorney
4 fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. §1021.5.
5 Should Settling Defendant prevail on any motion, application for order to show cause or other
6 proceeding to enforce a violation of this Consent Judgment, Settling Defendant shall be entitled to its
7 reasonable attorney fees and costs incurred as a result of such motion, order or application upon a
8 finding that Davia's prosecution of the motion or application lacked substantial justification. For
9 purposes of this Agreement, the term substantial justification shall carry the same meaning as used
10 in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

11 **14.2** Except as specifically provided in the above paragraph and in Section 4.3, each party
12 shall bear its own costs and attorney's fees in connection with this action.

13 **14.3** Nothing in this Section 14 shall preclude a party from seeking an award of sanctions
14 pursuant to law.

15 **15. NEUTRAL CONSTRUCTION**

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

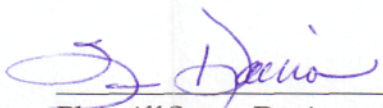
24 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

25 This Agreement may be executed in counterparts and by facsimile or portable document
26 format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall
27 constitute one and the same document.
28

1 **17. AUTHORIZATION**

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

5 **IT IS SO AGREED**

<p>6 Dated: September <u>31</u>, 2016</p> <p>7 </p> <p>8 _____ 9 Plaintiff Susan Davia</p>	<p>Dated: September __, 2016</p> <p>_____</p> <p>James Hagale, President BPS Direct, LLC Bass Pro Outdoor World LLC</p>
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1 **17. AUTHORIZATION**

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

5 **IT IS SO AGREED**

<p>6 Dated: September __, 2016</p> <p>7</p> <p>8 _____ Plaintiff Susan Davia</p> <p>9</p>	<p>6 Dated: September 21, 2016</p> <p>7 <i>Larry K. Wilcher</i></p> <p>8 _____ Larry K. Wilcher, Group VP & GC BPS Direct, LLC Bass Pro Outdoor World LLC</p> <p>9</p>
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