

**FILED**

NOV 12 2019

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: T. Thomason, Deputy

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 FOR THE COUNTY OF MARIN  
11 UNLIMITED CIVIL JURISDICTION

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 A&E INCORPORATED, LANG TOOLS,  
16 BALKAMP, INC., GENUINE PARTS  
COMPANY and DOES 1-150,

17 Defendants.

Case No. CIV 1701730

**JUDGMENT ON PROPOSITION 65  
SETTLEMENT**

Action Filed: May 12, 2017  
Trial Date: None Assigned

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

10 **IT IS SO ORDERED.**

11 Dated: NOV 12 2019

**STEPHEN P. FRECCERO**

Honorable Stephen P. Freccero  
Judge of the Superior Court

# EXHIBIT A

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12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 BALKAMP, INC., GENUINE PARTS  
16 COMPANY, A&E INCORPORATED, A&E  
17 TOOLS, LANG TOOLS and DOES 1-150,

18 Defendants.

Case No. CIV 1701730

**CONSENT TO JUDGMENT AS TO  
DEFENDANT A&E INCORPORATED AND  
ITS A&E TOOLS AND LANG TOOLS  
DIVISIONS**

Action Filed: May 12, 2017  
Trial Date: None Assigned

1       **1.       INTRODUCTION**

2               **1.1       The Parties**

3               This Consent to Judgment Settlement Agreement (“Agreement”) is entered into by and  
4 between Plaintiff Susan Davia, (“Davia”) and defendants A&E Incorporated (including its  
5 divisions, A&E Tools, Eckmann Custom Products, Cabat) and Lang Tools (hereafter, collectively,  
6 “A&E” or “Defendant”), with Davia and A&E 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       Defendants**

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

15              **1.4       General Allegations**

16              Davia alleges that A&E participated in the manufacture (or other acquisition), distribution  
17 and sale, into the State of California, of hand tools and pliers with vinyl-coated grips, including, but  
18 not limited to Service Tools Mini Combination Snap Ring Pliers and Battery Nut Plier, containing  
19 phthalates, which products exposed users to diisononyl phthalate (“DINP”) and di-isodecyl  
20 phthalate (“DIDP”) without first providing any “clear and reasonable warning” under Proposition  
21 65. DINP is listed as a carcinogen pursuant to Proposition 65 and DIDP is listed as a reproductive  
22 toxin. DINP and DIDP shall hereinafter be collectively referred to as the “Listed Chemical.”

23              **1.5       Notices of Violation**

24              On October 11, 2016, Davia served Balkamp, Inc., Genuine Parts Company and various  
25 public enforcement agencies with a Proposition 65 60-day Notice of Violation, together with a  
26 Certificate of Merit (“Notice”), that provided public enforcers and these entities with notice of  
27 alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence  
28 of the Listed Chemical in and on their vinyl-coated hand tool products (AG Notice 2016-01166).

              On October 10, 2017, Davia served A&E Incorporated, A&E Tools, Lang Tools and various

1 public enforcement agencies with a Proposition 65 60-day Notice of Violation, together with a  
2 Certificate of Merit (“Notice”), that also provided public enforcers and these entities with notice of  
3 alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence  
4 of the Listed Chemical in and on their vinyl-coated hand tool products (AG Notice 2017-02274).

5 A&E received AG Notice 2017-02274. The Parties represent that, as of the date each  
6 executes this Agreement, they believe that no public enforcer is diligently prosecuting a  
7 Proposition 65 enforcement action related to the Listed Chemical in the Covered Products, as  
8 identified in the Notice.

### 9 **1.6 Complaint and First Amended Complaint**

10 On May 12, 2017, Davia, acting in the interest of the general public in California, filed a  
11 Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV  
12 1701730, alleging violations by Balkamp, Inc., Genuine Parts Company and Does 1-150 of Health &  
13 Safety Code § 25249.6 based, *inter alia*, on the alleged exposures to the Listed Chemical contained in  
14 certain vinyl-coated hand tool products.

15 On December 21, 2017, Davia, acting in the interest of the general public in California, filed  
16 a First Amended Complaint in the Superior Court of the State of California for the County of  
17 Marin, Case No. CIV 1701730, alleging violations by A&E, Balkamp, Inc., Genuine Parts Company  
18 and Does 1-150 of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged exposures to the  
19 Listed Chemical contained in certain vinyl-coated hand tool products.

### 20 **1.7 No Admission**

21 This Agreement resolves claims that are denied and disputed by A&E. The Parties enter  
22 into this Agreement pursuant to a full and final settlement of any and all claims between the  
23 Parties for the purpose of avoiding prolonged litigation. A&E denies the material factual and legal  
24 allegations contained in the Notice and Action, maintains that it did not knowingly or intentionally  
25 expose California consumers to the Listed Chemical through the reasonably foreseeable use of the  
26 Covered Product and otherwise contends that all Noticed products it has manufactured,  
27 distributed and/or sold in California have been and are in compliance with all applicable laws.  
28 Nothing in this Agreement shall be construed as an admission by A&E of any fact, finding, issue of  
law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an

1 admission by A&E of any fact, finding, conclusion, issue of law, or violation of law, such being  
2 specifically denied by A&E. However, notwithstanding the foregoing, this section shall not  
3 diminish or otherwise affect A&E'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  
6 over A&E as to the allegations contained in the Complaint and FAC, that venue is proper in  
7 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this  
8 Agreement. As an express part of this Agreement, A&E stipulates that the Court in which this  
9 action was filed shall retain jurisdiction over the parties to enforce the settlement until performance  
10 in full of the terms of the settlement.

### 11 **2. DEFINITIONS**

12 **2.1** The term "Complaint" shall mean the May 12, 2017, Complaint, Marin County  
13 Superior Court Case No. CIV 1701730 and the December 21, 2017, First Amended Complaint.

14 **2.2** The term "Products" or "Covered Products" shall mean all automotive hand tools,  
15 ratcheting tools, diagnostic and specialty tools with vinyl grips or other vinyl covering  
16 manufactured, distributed or sold by, or for, A&E Tools or Lang Tools, including, but not limited  
17 to, quick switch pliers, retaining ring pliers, thread restorer files, tappet gauge sets, wrenches,  
18 presses, spreaders, seat belt pre-tensioner release tools, rear isolator replacement tools, clutch  
19 master cylinder pin presses, fuel line release tools and switch tool.

20 **2.3** The term "Phthalate Free" shall mean less than or equal to 1,000 parts per million  
21 ("ppm") of DEHP, DBP, DINP, DIDP, DnHP and BBP, (collectively "Phthalates") in any  
22 component of any Covered Product, determined by duplicate quality controlled tests using  
23 Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C or equivalent  
24 methodologies used by any California or Federal agency for purposes of determining the phthalate  
25 content in a solid substance.

26 **2.4** "California Customer" shall mean any customer, vendor or retailer that is located  
27 in California or that A&E reasonably understands makes sales to customers located in California,  
28 including, but not limited to Balkamp Inc. or Genuine Parts Company.

**2.5** The term "Effective Date" shall mean July 1, 2019.

1       **3.       NON-MONETARY RELIEF**

2               **3.1       Existing Inventory of Covered Products**

3               No later than the Effective Date, A&E shall send a letter, electronic or otherwise  
4       (“Notification Letter”) to all primary sales contacts at each retail customer to which A&E directly  
5       sells Covered Products, and which retail customer A&E reasonably understands maintains any  
6       remaining inventory of non-reformulated Covered Products without any Proposition 65 warning  
7       label, advising such contacts that the Covered Products “have been demonstrated to contain DINP  
8       and DIDP, phthalate chemicals known to the State of California to cause cancer and birth defects  
9       or other reproductive harm” and requesting such retailers confirm that all such Covered Products  
10      that are not confirmed to be Phthalate Free are either (a) labelled with the warning identified in  
11      Section 3.3(a) or (b) immediately removed from sale to California customers and returned to A&E  
12      at A&E’s own expense. The Notification Letter shall require a response from the recipient within  
13      15 days, confirming the amount of inventory of Covered Product and whether such inventory of  
14      Covered Products will be labeled or transferred. A&E shall maintain records of all  
15      correspondence or other communications generated pursuant to this Section for two years after  
16      the Effective Date and shall promptly produce copies of such records upon Davia’s written  
17      request.

18               **3.2       Product Reformulation Commitment**

19              **3.2.1** A&E represents as a material term of this Agreement that, after becoming aware of  
20      Davia’s claims regarding Covered Products, they made a good faith effort to notify their  
21      customers of Covered Products that such products contained phthalates and should not be sold in  
22      California without an appropriate Proposition 65 warning statement. No later than the Effective  
23      Date, to the extent not already completed, A&E shall provide the Phthalate Free phthalate  
24      concentration standards of Section 2.3 to the manufacturer or vendors of any Covered Product and  
25      the vinyl coating component thereof (if known) and instruct each such entity not to incorporate  
26      any raw or component materials that do not meet the Phthalate Free concentration standards of  
27      Section 2.3 into any Covered Product. A&E shall maintain copies of all vendor correspondence  
28      relating to the phthalate concentration standards and shall produce such copies to Davia within



1 fifteen (15) days of receipt of written request from Davia. Davia may make such a request for  
2 vendor correspondence no more than twice every 12 months.

3 **3.2.2** After the Effective Date, A&E shall provide the Phthalate Free phthalate  
4 concentration standards of Section 2.3 to any new manufacturer or vendor of the Covered Product  
5 and the vinyl component thereof (if known) and instruct such manufacturer or vendor not to  
6 incorporate any raw or component materials that do not meet the Phthalate Free concentration  
7 standards of Section 2.3 into any Covered Product. Prior to purchase or other acquisition of any  
8 Covered Product from any new manufacturer or vendor, A&E shall obtain a written confirmation  
9 and accompanying laboratory test result from the new vendor demonstrating compliance with the  
10 Phthalate Free phthalate concentration standard in all materials comprising the Covered Product  
11 and a post-production sample of Covered Product. For every Covered Product A&E  
12 manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from  
13 a new vendor after the Effective Date, A&E shall maintain copies of all testing of such products  
14 demonstrating compliance with this section, shall maintain copies of all vendor correspondence  
15 relating to the Phthalate Free concentration standards and shall produce such copies to Davia  
16 within fifteen (15) days of receipt of written request from Davia. Davia may make such a request  
17 for vendor correspondence no more than twice every 12 months.

18 **3.2.3** After the Effective Date, A&E shall not manufacture or cause to be manufactured,  
19 order or cause to be ordered, or distribute or cause to be distributed any Covered Product that is  
20 not Phthalate Free.

### 21 **3.3 Product Warning for Existing Inventory**

22 A&E represents as a material term of this Agreement that, at the time of Davia's claims  
23 regarding Covered Products, they were already making a good faith effort to apply Proposition 65  
24 clear and reasonable warning labels to Covered Products. As of the Effective Date, to the extent  
25 not already accomplished, A&E shall not sell, distribute or ship, or cause to be sold, distributed or  
26 shipped, any existing inventory of Covered Product to a California Customer unless such Covered  
27 Products are confirmed to be Phthalate Free or are sold or shipped with one of the clear and  
28 reasonable warnings set forth hereafter.

Each warning shall be prominently placed with such conspicuousness as compared with

1 other words, statements, designs, or devices as to render it likely to be read and understood by an  
2 ordinary individual under customary conditions *before* purchase or use. Each warning shall be  
3 provided in a manner such that the consumer or user understands to which *specific* Covered  
4 Product the warning applies, so as to minimize the risk of consumer confusion.

5 (a) **Product Labeling.** For all existing inventory of Covered Products  
6 remaining in the possession, custody or control of A&E that have not been reformulated to meet  
7 the Phthalate Free requirements of Section 2.3, A&E shall affix a warning to the labeling of the  
8 Covered Product. For such remaining inventory labelled before August 30, 2018, the warning  
9 label shall read:

10 **WARNING:** This product contains chemicals known to the  
11 State of California to cause cancer and birth  
12 defects of other reproductive harm.

13 For such remaining inventory labelled after August 30, 2018, the warning label shall read either:

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

16 or

17 **⚠WARNING:** This product can expose you to chemicals,  
18 including DEHP, which are known to the  
19 State of California to cause cancer and birth  
20 defects or other reproductive harm. For  
21 more information go to  
22 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

23 (b) **Catalog and Internet Sales.** For all Covered Products sold or offered for  
24 sale by A&E via catalog or the Internet to California Customers, for so long as A&E maintains  
25 inventory of Covered Products that are not Phthalate Free, any such catalog or Internet site  
26 offering any Covered Product for sale shall include a warning in the catalog or within the website,  
27 identifying the specific Covered Product to which the warning applies, as specified in Sections  
28 3.2(b)(i) and (ii) below.

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order  
catalog first printed after the Effective Date must be in the same type size or larger than the Covered  
Product description text within the catalog. For catalogs printed after the Effective Date, the  
following warning shall be provided on the same page and in the same location as the display  
and/or description of the Covered Product:

1                                    **▲WARNING:** This product can expose you to chemicals,  
2                                    including DEHP, which are known to the  
3                                    State of California to cause cancer and birth  
4                                    defects or other reproductive harm. For  
   more information go to  
   [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

5                    Where it is impracticable to provide the warning on the same page and in the same  
6                    location as the display and/or description of the Covered Product, A&E may utilize the  
7                    designated symbol “▼” to cross reference the applicable warning For catalogs printed before  
8                    August 30, 2018, the following warning language shall appear on the inside of the front or back  
9                    cover of the catalog or on the same page as any order form for the Covered Product(s):

10                                   **WARNING:** Certain products identified with this symbol ▼  
11                                   contain chemicals known to the State of  
12                                   California to cause cancer and birth defects or  
   other reproductive harm.

13                    For catalogs printed after the Effective Date utilizing the symbol “▼,”the following warning  
14                    language shall appear on the inside of the front or back cover of the catalog or on the same page as  
15                    any order form for the Covered Product(s):

16                                   **▲WARNING:** Certain products identified with this  
17                                   symbol ▼ can expose you to chemicals,  
18                                   including DEHP, which are known to the  
19                                   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).

20                    The designated symbol must appear on the same page and in close proximity to the  
21                    display and/or description of the Covered Product. On each page where the designated symbol  
22                    appears, A&E must provide a header or footer directing the consumer to the warning language  
23                    and definition of the designated symbol.

24                                   (ii)    **Internet Website Warning.** A warning must be given in conjunction  
25                                   with the sale, or offer of sale, of any Covered Products by A&E via the Internet, provided it appears  
26                                   either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web  
27                                   page as the order form for a Covered Product; (c) on the same page as the price for any Covered  
28                                   Product; or (d) on one or more web pages displayed to a purchaser during the checkout process.  
   The following warning statement shall be used and shall appear in any of the above instances

1 adjacent to or immediately following the display, description, or price of the Covered Product for  
2 which it is given in the same type size or larger than the Covered Product description text:

3 **▲WARNING:** This product can expose you to chemicals,  
4 including DEHP, which are known to the  
5 State of California to cause cancer and birth  
6 defects or other reproductive harm. For  
7 more information go to  
8 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

9 Alternatively, the designated symbol may appear adjacent to or immediately following the  
10 display, description, or price of the Covered Product for which a warning is being given, provided  
11 that the following warning statement also appears elsewhere on the same web page, as follows:

12 **▲WARNING:** Certain products identified with this  
13 symbol ▼ can expose you to chemicals,  
14 including DEHP, which are known to the  
15 State of California to cause cancer and birth  
16 defects or other reproductive harm. For  
17 more information go to  
18 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

19 After December 31, 2019, A&E shall not distribute or otherwise sell any Covered Product to  
20 a California Customer unless it is Phthalate Free and shall not sell any products that are not  
21 Phthalate Free to a California Customer regardless of whether a Proposition 65 warning  
22 accompanies the product.

#### 23 **4. MONETARY PAYMENTS**

##### 24 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

25 As a condition of settlement of all the claims referred to in this Consent to Judgment, A&E  
26 shall pay a total of \$8,000 in civil penalties in accordance with California Health & Safety Code §  
27 25249.12(c)(1) & (d).

##### 28 **4.2 Augmentation of Penalty Payments**

For purposes of the penalty assessment under this Agreement, plaintiff is relying entirely  
upon defendant and its counsel for accurate, good faith reporting to plaintiff of the nature and  
amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers  
and presents to A&E evidence that the Covered Products have been distributed by A&E in sales

1 volumes materially different than those identified by A&E prior to execution of this Agreement,  
2 then A&E shall be liable for an additional penalty amount of \$10,000.00. A&E shall also be liable  
3 for any reasonable, additional attorney fees expended by Davia in discovering such additional  
4 retailers or sales, up to a maximum of \$10,000 or some other amount awarded by the court after  
5 hearing. Davia agrees to provide A&E with a written demand for all such additional penalties and  
6 attorney fees under this Section. After service of such demand, A&E shall have thirty (30) days to  
7 agree to the amount of fees and penalties owing by A&E and submit such payment to Davia in  
8 accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4.  
9 Should this thirty (30) day period pass without any such resolution between the parties and  
10 payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim for  
11 additional civil penalties pursuant to this Section and shall be entitled to all reasonable attorney  
12 fees and costs relating to such claim.

#### 13 **4.3 Reimbursement of Plaintiff's Fees and Costs**

14 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without  
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
16 issue to be resolved after the material terms of the agreement had been settled. A&E then  
17 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
18 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due  
19 to Davia and her counsel under general contract principles and the private attorney general  
20 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in  
21 this matter, except fees that may be incurred on appeal. Under these legal principles, A&E shall  
22 pay the amount of \$51,000 for fees and costs incurred investigating, litigating and enforcing this  
23 matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and  
24 obtaining the Court's approval of this Agreement in the public interest.

#### 25 **4.4 Payment Procedures**

26 A&E shall deliver all settlement payment funds required by Sections 4.1 and 4.3 of this  
27 Agreement to its counsel within one week of the date that this Agreement is fully executed by the  
28 Parties. A&E's counsel shall confirm receipt of settlement funds in writing to plaintiff's counsel  
and, thereafter, hold the amounts paid in trust until such time as the Court approves this

1 settlement contemplated by Section 7.

2 Within two business days of the date plaintiff provides electronic mail notice to counsel for  
3 A&E that the Court has approved this settlement, A&E's counsel shall deliver the settlement  
4 payments required by Sections 4.1 and 4.3 to plaintiff's counsel as follows:

5 1. A civil penalty check in the amount of \$6,000 payable to "OEHHA" (EIN: 68-  
6 0284486, Memo line "Prop. 65 Penalties, 2017-02274");

7 2. A civil penalty check in the amount of \$2,000 payable to "Susan Davia" (Tax ID to  
8 be supplied, Memo line "Prop. 65 Penalties, 2017-02274"); and

9 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the  
10 amount of \$51,000 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2017-  
11 02274")

12 A&E shall satisfy its obligation to pay any civil penalties pursuant to Section 4.2 by civil  
13 penalty checks payable to "OEHHA" and "Susan Davia" (Memo line "Prop. 65 Penalties, 2017-  
14 02274"), in the amounts agreed to pursuant to Section 4.2 or as ordered by the Court.

15 A&E shall satisfy its obligation to pay any attorney fees or costs pursuant to Section 4.2 by  
16 a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2017-02274"), in the amount  
17 agreed to pursuant to Section 4.2 or as ordered by the Court.

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

20 Sheffer Law Firm  
21 Attn: Proposition 65 Controller  
22 81 Throckmorton Ave., Suite 202  
23 Mill Valley, CA 94941

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

## 27 5. CLAIMS COVERED AND RELEASE

### 28 5.1 Davia's Release of A&E

5.1.1 This Agreement is a full, final, and binding resolution between Davia, on behalf of  
herself and in the public interest, and A&E and its attorneys, successors and assigns ("Defendant

1 Releasees”) and each entity to whom it directly or indirectly distributed or sold the Covered  
2 Products, including, but not limited to, Balkamp, Inc. and Genuine Parts Company, (“Downstream  
3 Releasees”) of any violation of Proposition 65 that was asserted against Defendant Releasees  
4 regarding the failure to warn about exposure to any Phthalates contained in the Covered Products  
5 distributed by A&E before the Effective Date.

6 **5.1.2** Davia, acting on her own behalf and in the public interest, hereby waives, and  
7 releases Defendant Releasees and Downstream Releasees from all claims for violation of  
8 Proposition 65 based upon exposures to the Phthalates from Covered Products distributed by A&E  
9 prior to the Effective Date.

10 **5.1.3** The Parties understand and agree that this Section 5.1 release does not extend  
11 upstream to any entities that manufactured any Covered Product or any component parts thereof,  
12 or any distributors or suppliers who sold any Covered Products or any component parts thereof to  
13 Defendants.

14 **5.1.4** Upon court approval of the Agreement, the Parties waive their respective rights to a  
15 hearing or trial on the allegations of the Complaint.

16 **5.2** A&E’s Release of Davia

17 **5.2.1** A&E waives any and all claims against Davia, her attorneys, and other  
18 representatives for any and all actions taken or statements made (or those that could have been  
19 taken or made) by Davia and her attorneys and other representatives, whether in the course of  
20 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
21 and/or with respect to the Covered Products.

22 **6. GENERAL RELEASE**

23 The Parties also provide each other with a general release herein which shall be effective as a full  
24 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,  
25 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of any nature, character  
26 or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the  
27 Action. The Parties acknowledge that each is familiar with Section 1542 of the California Civil  
28 Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE

CONSENT TO JUDGMENT

1 CREDITOR OR RELEASED PARTY DOES NOT KNOW OR SUSPECT TO EXIST  
2 IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND  
3 THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED  
4 HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5 The Parties expressly waive and relinquish any and all rights and benefits that each may  
6 have under, or which may be conferred on it by the provisions of Section 1542 of the California  
7 Civil Code as well as under any other state or federal statute or common law principle of similar  
8 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the  
9 released matters. In furtherance of such intention, the release hereby given shall be and remain in  
10 effect as a full and complete release notwithstanding the discovery or existence of any such  
11 additional or different claims or facts arising out of the released matters.

12 **7. SEVERABILITY**

13 If, subsequent to court approval of this Agreement, any of the provisions of this Agreement  
14 are determined by a court to be unenforceable, so long as all parties agree, the validity of the  
15 enforceable provisions remaining shall not be adversely affected, unless the Court finds that any  
16 unenforceable provision is not severable from the remainder of the Agreement.

17 **8. COURT APPROVAL**

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

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

26 **9. GOVERNING LAW**

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

28 **10. NOTICES**

When any Party is entitled to receive any notice under this Agreement, the notice shall be  
sent by tracked mail and electronic mail (if applicable) to the following:



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For A&E, to:

John W. Lang, President & COO  
A & E Incorporated  
5501 21st Street  
Racine, WI 53406

With a copy to their counsel:

J. T. Wells Blaxter  
Blaxter Blackman LLP  
601 California Street, Suite 1505  
San Francisco, California 94108

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.

**11. 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) and to file a motion for approval of this Agreement.

**12. MODIFICATION**

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

1       **13.     ADDITIONAL POST-EXECUTION ACTIVITIES**

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

10       **14.     ENTIRE AGREEMENT**

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

20       **15.     ATTORNEYS' FEES**

21             Should Davia or A&E prevail on any motion, application for order to show cause or other  
22 proceeding to enforce a violation of this Agreement, such prevailing party shall be entitled to their  
23 reasonable attorney fees and costs incurred as a result of such motion, order or application,  
24 consistent with C.C.P. §1021.5.

25             Except as specifically provided in the above paragraph and in Section 4.3, each Party shall  
26 bear its own costs and attorney's fees in connection with this action.

27             Nothing in this Section 14 shall preclude a Party from seeking an award of sanctions  
28 pursuant to law.

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**16. NEUTRAL CONSTRUCTION**

All 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.

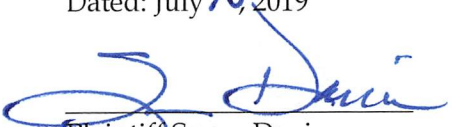
**17. COUNTERPARTS, FACSIMILE SIGNATURES**

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.

**18. AUTHORIZATION**

The undersigned parties and their counsel 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: July , 2019</p> <p>_____ John W. Lang, President &amp; COO A&amp;E Incorporated</p>	<p>Dated: July 15, 2019</p> <p> Plaintiff Susan Davia</p>
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<p>20 August 1st 21 Dated: <del>June</del>, 2019</p> <p>22  23 <del>Max Koell</del> 24 <del>Vice President of Marketing and</del> 25 <del>Product Management</del> <del>A&amp;E Incorporated</del></p>	<p>20 Dated: June , 2019</p> <p>21 _____ 22 Plaintiff Susan Davia</p>
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26 John W. Lang  
27 President and C.O.O.  
28 A & E Incorporated