

FILED

JAN 12 2018

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT

By: J. Berg, Deputy

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SHEFFER LAW FIRM
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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 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 FOR THE COUNTY OF MARIN
13 UNLIMITED CIVIL JURISDICTION

14
15 SUSAN DAVIA,

16 Plaintiff,

17 v.

18 HIMATSINGKA SEIDE LIMITED,
19 HIMATSINGKA AMERICA, INC., DIVATEX
HOME FASHIONS, INC. and DOES 1-150,

20 Defendants.

Case No. CIV 1703417

**JUDGMENT ON PROPOSITION 65
SETTLEMENT**

Action Filed: September 15, 2017
Trial Date: None Assigned

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

10 **IT IS SO ORDERED.**

11 Dated: JAN 12 2018

PAUL M. HAAKENSON

Honorable Paul Haakenson
Judge of the Superior Court

EXHIBIT A

1 Gregory M. Sheffer, Esq., State Bar No. 173124
2 SHEFFER LAW FIRM
3 81 Throckmorton Ave., Suite 202
4 Mill Valley, CA 94941
5 Telephone: (415) 388-0911
6 Facsimile: (415) 388-9911

7 Attorneys for Plaintiff
8 SUSAN DAVIA

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

12 SUSAN DAVIA,

13 Plaintiff,

14 vs.

15 HIMATSINGKA SEIDE LIMITED,
16 HIMATSINGKA AMERICA, INC., DIVATEX
17 HOME FASHIONS, INC. and DOES 1-150,

18 Defendants.

Case No. CIV 1703417

**SETTLEMENT AGREEMENT AND
STIPULATION TO JUDGMENT**

Case Filed: September 15, 2017
Trial Date: None Assigned

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1.5 Notice of Violation

On October 11, 2016, Davia represents she served Himatsingka Seide Limited, Himatsingka America, Inc. Divatex Home Fashions, Inc. and Costco Wholesale Corporation with a valid and compliant Proposition 65 60-Day Notice of Violation, including a valid, requisite Certificate of Merit, that provided public enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of exposure to DEHP and DINP from the vinyl bedding storage and packaging products sold in California (the “Notice”).

Himatsingka received the Notice. The Parties represent that, as of the date they execute this Agreement, they believe that no public enforcer is diligently prosecuting a Proposition 65 enforcement action related to the Listed Chemical in the products identified in the Notice.

1.6 Complaint

On September 15, 2017 Davia, acting in the California public interest, filed a Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV 1703417 alleging violations by Himatsingka and Does 1-150 of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged consumer exposures to DEHP and DINP in the Covered Packaging (defined below) (the “Action”).

1.7 No Admission

This Agreement resolves claims that are denied and disputed by the Parties. 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 Notice 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 Packaging and otherwise contends that all products, including the Covered Packaging and Covered Products, it has manufactured, and/or 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 against interest by any Party of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission against

1 interest by any Party of any fact, finding, conclusion, issue of law, or violation of law.
2 Notwithstanding the foregoing, this section shall not diminish or otherwise affect the Parties'
3 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 Himatsingka as to the allegations contained in the Complaint, that venue is proper in County of
7 Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Agreement. As
8 an express part of this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was filed
9 shall retain jurisdiction over the parties to enforce the Agreement.

10 **2.** DEFINITIONS

11 **2.1** The term "Complaint" shall mean the, September 15, 2017 Complaint styled *Davia v.*
12 *Himatsingka Seide Limited, et al.*, Marin County Superior Court Case No. CIV 1703417.

13 **2.2** The Term "Covered Product" shall mean any textile bedding product (such as sheets,
14 pillow cases, bed covers, comforters, quilts, throws, shams) distributed by Himatsingka into
15 California for retail sale, including, but not limited to, Divatex Flannel Sheet Set, all sizes (such as
16 #676102, 806222021447) and Tranquil Nights Sheet Set, all sizes (such as #1022969, 806222028903).
17 The two specific Covered Products listed herein shall be the "Exemplar Covered Product".

18 **2.3** The term "Covered Packaging" means any storage or packaging case made in whole
19 or in part with vinyl or PVC into which a Covered Product is packaged and sold or offered for sale
20 to consumers in California.

21 **2.4** The term "Phthalate Free" Covered Packaging shall mean that each component of
22 any Covered Packaging contains less than or equal to 1,000 parts per million ("ppm") each of DEHP,
23 DBP, DINP, DIDP, DnHP and BBP as determined by a minimum of duplicate quality controlled test
24 results using Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C, or
25 equivalent methodologies used by state or federal agencies for purposes of determining DEHP or
26 other listed phthalate content in a solid substance.

27 **2.5** The term "Effective Date" shall mean October 17, 2017.
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1 **2.6** The term “In The Stream Of Commerce” shall mean Covered Product that has left the
2 actual possession of Himatsingka or Covered Product that is already in final consumer packaging
3 and is in a Himatsingka warehouse or storage location.

4 **3.** NON-MONETARY RELIEF

5 **3.1** Formulation Commitment

6 As of the Effective Date, Himatsingka shall not sell or distribute any Covered Product
7 contained in Covered Packaging unless such Covered Packaging is Phthalate Free. This Section 3.1
8 does not apply to Covered Product In the Stream of Commerce as of the Effective Date so long as
9 such Covered Product In The Stream Of Commerce is distributed by Himatsingka before December
10 31, 2017.

11 **3.1.1** At any time after the Effective Date that Himatsingka first contracts with an existing
12 or new vendor of Covered Packaging, Himatsingka shall provide such vendor with the Phthalate
13 Free concentration standards of Section 2.4 and instruct such vendor that such Covered Packaging
14 must meet the Phthalate Free concentration standards of Section 2.4. This obligation to provide
15 Phthalate Free concentration standards shall not apply to any vendor that does not supply Covered
16 Packaging (e.g., provides paper packaging).

17 **3.1.2** After the Effective Date, Himatsingka shall maintain copies of all testing of Covered
18 Packaging it conducts or obtains in attempting compliance with this Section 3, shall maintain copies
19 of material vendor correspondence relating to the Phthalate Free standards and shall produce such
20 copies to Davia within fifteen (15) days of receipt of written request from Davia. Davia shall not be
21 entitled to request this information more than once in 2017 and once annually thereafter, absent good
22 cause shown. Himatsingka shall retain the Section 3.1.1 and 3.1.2 records for no less than three (3)
23 years after the date of creation of each such document.

24 **3.2** Previously Distributed Exemplar Covered Product.

25 No later than the Effective Date, Himatsingka shall send a letter, electronic or otherwise
26 (“Notification Letter”) to its primary customer contact at (1) Costco Wholesale Corporation, (2) any
27 California retail customer receiving any Exemplar Covered Product after January 1, 2016, and (3) any
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1 other customer that Himatsingka reasonably understands maintains inventory of Exemplar Covered
2 Products with Covered Packaging that is not Phthalate Free. The Notification Letter shall advise the
3 recipient that Himatsingka has been made aware of test results demonstrating that the Covered
4 Packaging for Exemplar Covered Products contains phthalate chemicals known to the State of
5 California to cause cancer and birth defects or other reproductive harm. The Notification Letter shall
6 direct the recipient to either (a) return all existing inventory of Exemplar Covered Product from
7 California stores to a designated Himatsingka representative or (b) label all Exemplar Covered
8 Product with a clear and reasonable Proposition 65 warning before such product is sold in the
9 California retail stores. The Notification Letter shall include a minimum of one sheet of white
10 background, adhesive, Proposition 65 Warning stickers with the following warning in no less than
11 Book Antiqua, point 9 font (or its equivalent):

12
13 **WARNING:** The vinyl/PVC packaging for this
14 product contains phthalate chemicals
15 known to the State of California to
16 cause cancer and birth defects or
other reproductive harm. Please do
not-reuse packaging and discard it
immediately after product removal.

17 The Notification Letter shall request written confirmation from the recipient, within fifteen (15) days
18 of mailing, as to the number of Exemplar Covered Product in the recipient's inventory and
19 confirmation of whether the inventory will be returned to the designated Himatsingka agent or
20 labelled by the recipient before sale in California. Himatsingka shall diligently pursue such written
21 response from the recipients. Himatsingka shall maintain records of compliance correspondence,
22 inventory reports or other material communications confirming compliance with this section for three
23 (3) years from the Effective Date and shall produce copies of such records upon written request by
24 Davia subject to the same terms in Section 3.1.2 governing when Davia may request information. This
25 Section 3.2 applies only to Exemplar Covered Product and does not apply to any Covered Product, if
26 any, besides Exemplar Covered Product.

1 **4. MONETARY PAYMENTS**

2 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

3 As a condition of settlement of all the claims referred to in this Agreement, Himatsingka shall
4 pay a total of \$14,500 in civil penalties in accordance with California Health & Safety Code §
5 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health
6 Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Davia.

7 **4.2 Augmentation of Penalty Payments**

8 For purposes of the penalty assessment under this Agreement, Plaintiff is relying upon
9 Defendant and its retailer for accurate, good faith reporting to Plaintiff of the nature and amounts of
10 relevant sales activity and retailer compliance with the warning obligations of this Agreement. If
11 within nine (9) months of the Effective Date, Plaintiff discovers and presents to Defendant either (1)
12 evidence that any Exemplar Covered Product has been sold in sales volumes materially different
13 (more than 15%) than the highest figures provided by Himatsingka to Davia in good faith prior to
14 execution of this Agreement, or (2) that after completion of the actions set forth in Section 3.2, another
15 entity is selling the Exemplar Covered Product in California without a warning pursuant to this
16 Agreement, then Himatsingka shall be liable for an additional penalty amount of up to \$100.00 for
17 each unit of Exemplar Covered Product sold in California prior to execution of this Agreement but
18 not identified by Himatsingka to Plaintiff or for each unit of Exemplar Covered Product sold in
19 California without a warning after more than ten (10) units are found without the requisite warning.
20 Himatsingka shall also be liable for any reasonable, additional attorney fees expended by Plaintiff in
21 discovering applicable California sales of Exemplar Covered Product without warning in violation
22 of this Section 3.3. Plaintiff agrees to provide Himatsingka with a written demand for all such
23 additional penalties and attorney fees under this Section. After service of such demand, the Parties
24 shall meet and confer in good faith to assess the information. If within twenty (20) days Himatsingka
25 agrees Plaintiff has documented a violation of this Section, the Parties shall have an additional ten
26 (10) days to agree to the amount of fees and penalties owing. Thereafter, Himatsingka shall have five
27 (5) days to submit such payment to Plaintiff in accordance with the method of payment of penalties

1 and fees identified in Section 4.4. These deadlines may be extended upon mutual agreement of the
2 Parties. Should the Parties fail to agree on whether a violation exists or the amount of penalties or
3 fees, Plaintiff shall be entitled to enforce this Agreement and resulting Consent Judgment, seeking
4 such relief as is authorized by law, and shall be entitled to reasonable attorney fees and costs as set
5 forth in Section 14. As of the execution date by Plaintiff, Plaintiff represents it is unaware of any
6 additional Exemplar Covered Product sold without a warning. For avoidance of doubt, it is not a
7 violation of this Consent Judgment if Exemplar Covered Products are sold in California without a
8 warning after Defendant's completion of the actions in Section 3.2; provided, however, that if such
9 sales exceed the figures set forth herein then the stipulated penalty terms set forth above could apply.

10 **4.3 Reimbursement of Plaintiff's Fees and Costs**

11 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
12 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
13 issue to be resolved after the material terms of the agreement had been settled. Himatsingka then
14 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
15 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Davia
16 and her counsel under general contract principles and the private attorney general doctrine codified
17 at California Code of Civil Procedure section 1021.5, for all work performed in this matter. Under
18 these legal principles, Himatsingka shall pay the amount of \$39,000 for fees and costs incurred
19 investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to
20 be incurred) negotiating, drafting, and obtaining the Court's approval of this Agreement in the public
21 interest.

22 **4.4 Payment Timing and Delivery Instructions, Payments Held In Trust**

23 Defendant shall deliver all settlement checks required by this Agreement and resulting
24 Consent Judgment to its counsel within thirty (30) days of execution of this Agreement.
25 Defendant's counsel shall confirm receipt of settlement checks in writing to Plaintiff's counsel.
26 Within five business days of the date Plaintiff electronically serves Defendant's counsel with a Notice
27 of Entry of the Court's approval order, counsel for Defendant shall deliver the settlement checks it
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1 has held pursuant to this Section to Plaintiff's counsel as follows:

- 2 1. a civil penalty check in the amount of \$10,875 payable to "OEHHA" (EIN: 68-0284486,
3 Memo line "Prop 65 Penalties, 2016-01167");
- 4 2. a civil penalty check in the amount of \$3,625 payable to "Susan Davia" (EIN: to be
5 supplied upon request by Defendant), Memo line "Prop 65 Penalties, 2016-01167"); and
- 6 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the amount
7 of \$39,000 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2016-01167").

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

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

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

16 **5. CLAIMS COVERED AND RELEASE**

17 **5.1 Davia's Releases of Settling Defendant**

18 **5.1.1** This Agreement is a full, final, and binding resolution between Davia, on behalf of
19 herself, her past and current agents, representatives, attorneys, successors, and/or assignees, and in
20 the interest of the general public, and Defendant and each of their attorneys, predecessors, successors,
21 affiliates, parents, subsidiaries, licensors, and assigns, and all of their downstream distributors,
22 customers, retailers, sellers, including Costco Wholesale Corporation and any affiliate thereof,
23 ("Defendant Releasees"), of any violation of Proposition 65 that has been or could have been asserted
24 against Defendant Releasees regarding the failure to warn about exposure to the Listed Chemical
25 arising in connection with any Covered Product or Covered Packaging manufactured, supplied,
26 distributed, or sold by Defendant Releasees prior to the Effective Date, regardless of when such
27 Covered Product in Covered Packaging is sold to a California consumer. Defendant's compliance
28 with this Agreement shall constitute compliance with Proposition 65 with respect to the Listed

1 Chemical in the Covered Packaging for Covered Products (including Exemplar Covered Products)
2 on and after the Effective Date. As to Davia only, Defendant's compliance with this Agreement shall
3 constitute compliance with Proposition 65 with respect to DBP, DIDP, DnHP and BBP in the Covered
4 Packaging for Covered Products (including Exemplar Covered Products) on and after the Effective
5 Date.

6 **5.1.2** Davia, on behalf of herself, her past and current agents, representatives, attorneys,
7 successors, and/or assignees, and in the interest of the general public, hereby releases and waives
8 with respect to Covered Products in Covered Packaging all rights to institute or participate in, directly
9 or indirectly, any form of legal action and releases all claims, including, without limitation, all actions,
10 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
11 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
12 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
13 (collectively "Claims"), against Defendant Releasees that arise under Proposition 65 or any other
14 statutory or common law claims that were or could have been asserted in the public interest, as such
15 Claims relate to Defendant Releasees' alleged failure to warn about exposures to the Listed Chemical
16 and, as to Davia's Claims only, to DBP, DIDP, DnHP and BBP, contained in any Covered Packaging
17 holding Covered Products.

18 **5.1.3** The Parties further understand and agree that this Section 5.1 release shall not extend
19 upstream to any entities that manufactured any Covered Packaging or any component parts thereof,
20 or any upstream distributors or suppliers who sold any Covered Packaging or any component parts
21 thereof to Defendants.

22 **5.1.4** Upon court approval of the Agreement, the Parties waive their respective rights to a
23 hearing or trial on the allegations of the Complaint.

24 **5.2** Defendant's Release of Davia

25 **5.2.1** Himatsingka waives any and all claims against Davia, her attorneys, and other
26 representatives for any and all actions taken or statements made (or those that could have been taken
27 or made) by Davia and her attorneys and other representatives, whether in the course of investigating
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1 claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with
2 respect to the Covered Packaging up through the date the Court approves this Agreement.

3 **5.3** General Release

4 **5.3.1** Each Party also provides, for the benefit of the other Party, a general release herein
5 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
6 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands
7 of any Party of any nature, character or kind, known or unknown, suspected or unsuspected, arising
8 out of the subject matter of the Action up through the date the Court approves this Agreement, except
9 as otherwise expressly identified herein. Each Party Defendant acknowledges that it is familiar with
10 Section 1542 of the California Civil Code, which provides as follows:

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

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

23 **6.** SEVERABILITY

24 If, subsequent to the date the Court approves this Agreement any provision of this Agreement
25 is determined by a court to be unenforceable, the validity of the enforceable provisions remaining,
26 upon agreement of the Parties, shall not be adversely affected, unless the Court finds that any
27 unenforceable provision is not severable from the remainder of the Agreement.

28 **7.** COURT APPROVAL

This Agreement is effective upon execution but must also be approved by the Court. If the

1 Court does not approve this Agreement in its entirety, the Parties shall meet and confer to determine
2 whether to modify the terms of the Agreement and to resubmit it for approval. In meeting and
3 conferring, the Parties agree to undertake any actions reasonably necessary to amend and/or modify
4 this Agreement in order to further the mutual intention of the Parties in entering into this Agreement.
5 The Agreement shall become null and void *ab initio* if, for any reason, it is not approved and entered
6 by the Court, as it is executed, within one year after it has been fully executed by all Parties. Upon
7 Court approval, Himatsingka agrees to accept notice of entry of the order of approval and judgment
8 by electronic mail service to its counsel of record.

9 **8. GOVERNING LAW**

10 The terms of this Agreement shall be governed by the laws of the State of California. This
11 Agreement applies only to Covered Packaging holding Covered Products sold in California and shall
12 have no effect on, and does not govern, any such Covered Packaging that is not manufactured and
13 distributed for sale in California or sold in California.

14 **9. NOTICES**

15 When any Party is entitled to receive any notice under this Agreement, the notice shall be sent
16 by certified mail or other delivery method with a delivery confirmation/tracking system and
17 electronic mail to the following:

18 For Himatsingka Seide Limited, Himatsingka America, Inc. and Divatex Home Fashions, Inc.:

19 David Greenstein, CEO
20 Himatsingka America, Inc.
21 261 Fifth Avenue, Suite 1400
New York, NY 10016.

22 With copy to their counsel at:

23 Judith Praitis, Esq.
24 Sidley Austin LLP
25 555 West Fifth Street
Los Angeles, CA 90013.

26 For Davia to:

27 Proposition 65 Coordinator
28 Sheffer Law Firm

1 81 Throckmorton Ave., Suite 202
2 Mill Valley, CA 94941.

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

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

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

8 **11. MODIFICATION**

9 This Agreement may be modified only by (1) a written agreement of the Parties and (2) upon
10 a successful motion of any party and approval of a modified Agreement by the Court. A copy of any
11 such motion to modify shall be served on the Office of the Attorney General.

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

13 Pursuant to Health & Safety Code § 25249.7 Davia is obligated to file a noticed motion to
14 obtain Court approval of this Agreement and Davia agrees to do so. Himatsingka shall not oppose
15 entry of this Agreement and agrees to employ reasonable efforts to support timely approval by the
16 Court.

17 **13. ENTIRE AGREEMENT**

18 This Settlement contains the sole and entire agreement and understanding of the Parties with
19 respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
20 commitments, and understandings related hereto. No representations, oral or otherwise, express or
21 implied, other than those contained herein have been made by any Party hereto. No other agreements
22 not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the
23 Parties. No supplementation, modification, waiver, or termination of this Agreement shall be binding
24 unless executed in writing by the Party to be bound. No waiver of any of the provisions of this
25 Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether or not
26 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, if allowed under C.C.P. §
5 1021.5. Should Settling Defendant prevail on any motion, application for order to show cause or
6 other proceeding to enforce a violation of this Agreement and resulting Consent Judgment, Settling
7 Defendant may be entitled to its reasonable attorney fees and costs incurred as a result of such motion,
8 order or application upon a finding that Davia’s prosecution of the motion or application lacked
9 substantial justification. For purposes of this Agreement, the term substantial justification shall carry
10 the same meaning as used 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.

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17. AUTHORIZATION

The undersigned parties 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: October __, 2017</p> <p>_____</p> <p>Ashok Sharma Vice President Strategic Finance & Company Secretary Himatsingka Seide Limited</p> <p>Dated: October __, 2017</p> <p>_____</p> <p>C.B. Ganapathy Sr. Vice President Corporate Affairs & Group General Counsel Himatsingka Seide Limited</p>	<p>Dated: October __, 2017</p> <p>_____</p> <p>David Greenstein Chief Executive Officer Himatsingka America, Inc.</p> <p>Dated: October __, 2017</p> <p>_____</p> <p>C.B. Ganapathy Sr. Vice President Corporate Affairs & Group General Counsel Himatsingka America, Inc.</p>
<p>Dated: October <u>16</u>, 2017</p> <p></p> <p>_____</p> <p>Plaintiff Susan Davia</p>	

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17. AUTHORIZATION

The undersigned parties 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: October __, 2017</p> <p></p> <p>Ashok Sharma Vice President Strategic Finance & Company Secretary Himatsingka Seide Limited</p> <p>Dated: October __, 2017</p> <p></p> <p>C.B. Ganapathy Sr. Vice President Corporate Affairs & Group General Counsel Himatsingka Seide Limited</p>	<p>Dated: October __, 2017</p> <p></p> <p>David Greenstein Chief Executive Officer Himatsingka America, Inc.</p> <p>Dated: October __, 2017</p> <p></p> <p>C.B. Ganapathy Sr. Vice President Corporate Affairs & Group General Counsel Himatsingka America, Inc.</p>
<p>Dated: October __, 2017</p> <p>_____ Plaintiff Susan Davia</p>	