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4 Attorneys for Plaintiff
5 SUSAN DAVIA

FILED

MAY 29 2019

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Anderson, Deputy

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION

11
12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 ONTEL PRODUCTS CORPORATION, RITE
AID CORPORATION and DOES 1-150,

16 Defendants.

Case No. CIV 1900431

**JUDGMENT ON PROPOSITION 65
SETTLEMENT**

Action Filed: January 31, 2019
Trial Date: None Assigned

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

10 **IT IS SO ORDERED.**

11 Dated: MAY 29 2019

JAMES T. CHOU
Honorable James T Chou
Judge of the Superior Court

EXHIBIT A

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

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

SUSAN DAVIA,
Plaintiff,
v.
ONTEL PRODUCTS CORPORATION, RITE
AID CORPORATION and DOES 1-150,
Defendants.

Case No. CIV1900431

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

Action Filed: January 31, 2109
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 Susan Davia and Ontel Products Corporation (“Ontel”)(each, a “Party” and collectively,
5 the “Parties”).

6 **1.2 Davia**

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

10 **1.3 Ontel Products Corporation**

11 Davia alleges Ontel is the manufacturer and/or distributor of products subject to this
12 Agreement. For the limited and exclusive purpose of this Agreement, to resolve Davia’s claims
13 against Ontel, Rite Aid Corporation (“Rite Aid”), and the Ontel Releasees, and to avoid the burden
14 and expense of litigation, Ontel shall not contest that it is a person in the course of doing business
15 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
16 Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

17 **1.4 General Allegations**

18 Davia alleges Ontel participated in the manufacture (or other acquisition), distribution
19 and/or sale, in the State of California, of wallets made with vinyl components that exposed users to
20 di(2-ethylhexyl)phthalate (DEHP)(the “Listed Chemical”) without first providing a “clear and
21 reasonable warning” under Proposition 65. DEHP is listed as a carcinogen and reproductive and
22 developmental toxin pursuant to Proposition 65.

23 **1.5 Notice of Violation**

24 On February 28, 2017, Davia served Ontel, Rite Aid, and various public enforcement
25 agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers and
26 the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to
27 warn consumers of the presence of DEHP found in Covered Products sold in California. Ontel
28 received this 60-Day Notice of Violation (the “Notice”).

1 Ontel and Davia represent that, as of the date each executes this Agreement, neither Party is
2 aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related
3 to DEHP in the Covered Products as identified in the Notice.

4 **1.6 Complaint**

5 On January 31, 2019, Davia filed a Complaint in the Superior Court of the State of California
6 for the County of Marin, Case No. CIV1900431, alleging violations by Ontel and Rite Aid of Health
7 and Safety Code § 25249.6 based on alleged exposures to DEHP in the Covered Products (the
8 “Action”).

9 **1.7 No Admission**

10 This Agreement resolves claims denied and disputed by Ontel. The Parties enter into this
11 Agreement pursuant to a full, final, and binding settlement of all claims between them to avoid
12 litigation. Ontel denies the material, factual, and legal allegations contained in the Notice, maintains
13 it did not knowingly or intentionally expose California consumers to the Listed Chemical through
14 the reasonably foreseeable use of the Covered Products and contends all Covered Products it has
15 distributed and/or sold in California have been and are in compliance with all applicable laws.
16 Nothing in this Agreement shall be construed as an admission by Ontel of any fact, finding,
17 conclusion, issue of law, or violation of law, nor shall Ontel’s compliance with this Agreement
18 constitute or be construed as an admission by Ontel of any fact, finding, conclusion, issue of law, or
19 violation of law, such specifically denied by Ontel. Notwithstanding the foregoing, this Section shall
20 not diminish or affect Ontel’s obligations, responsibilities, and/or duties under this Agreement.

21 **1.8 Consent to Jurisdiction**

22 For purposes of this Agreement only, the Parties stipulate: (a) Marin County Superior Court
23 has jurisdiction over Ontel as to the allegations in the Complaint; (b) venue is proper in the County
24 of Marin; and (c) this Court has jurisdiction to enforce the provisions of this Agreement. The Parties
25 stipulate that, pursuant to C.C.P. § 664.6, the Court in which this action is filed shall retain
26 jurisdiction over the Parties to enforce this Agreement until full performance of the terms set forth
27 herein.

1 **2. DEFINITIONS**

2 **2.1** "Product" or "Covered Product(s)" means all "As Seen On TV" Lock Wallet®
3 RFID Blocking Wallets (735541504198) sold or distributed by Ontel prior to the Effective Date.

4 **2.2** "Phthalate Free" Covered Products means each component of each Covered
5 Product contains less than or equal to 1,000 parts per million ("ppm") of di(2-ethylhexyl phthalate)
6 ("DEHP"), dibutyl phthalate ("DBP"), diisononyl phthalate ("DINP"), diisodecyl phthalate
7 ("DIDP"), di-n-hexyl phthalate ("DnHP") and butyl benzyl phthalate ("BBP") as determined by a
8 minimum of duplicate quality controlled test results using Environmental Protection Agency
9 ("EPA") testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal
10 or state agencies to determine the presence and measure the quantity of phthalates in a solid
11 substance.

12 **2.3** "California Customer" means any customer with a California ship to address, any
13 retail customer with one (1) or more retail outlets in California (including Rite Aid), any customer
14 who is a distributor for a retailer that maintains retail outlets in California, or any customer
15 operating an e-commerce website that offers products for sale to customers in California.

16 **2.4** "Effective Date" means April 1, 2019.

17 **3. INJUNCTIVE RELIEF (NON-MONETARY RELIEF)**

18 **3.1 Covered Product Reformulation and Sell-Off Commitment**

19 **3.1.1** As of the Effective Date, Ontel asserts it is not manufacturing or ordering the
20 manufacturing of the Covered Product and does not intend to manufacture or order the
21 manufacturing of the Covered Product after the Effective Date. If, after the Effective Date, Ontel
22 manufacturers or orders the manufacturing of the Covered Product, no later than thirty (30)
23 calendar days prior to the commencement of such manufacturing, Ontel shall provide the Phthalate
24 Free concentration standards of Section 2.2 to its then-current manufacturers of any Covered
25 Product and instruct such entities not to incorporate any raw or component materials that do not
26 meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product. Ontel
27 shall maintain copies of all manufacturer correspondence relating to the Phthalate Free
28 concentration standards for two (2) years after the Effective Date and shall produce such copies to

1 Davia within fifteen (15) days of receipt of reasonable request made in writing from Davia, as long
2 as such request is made within two (2) years after the Effective Date.

3 **3.1.2** As of the Effective Date, Ontel shall only manufacture, cause to be manufactured,
4 order or cause to be ordered, Covered Products that are Phthalate Free. For every Phthalate Free
5 Covered Product Ontel manufactures, causes to be manufactured, orders or causes to be ordered
6 after the Effective Date, Ontel shall, for a period of two (2) years after placing the order, maintain
7 copies of all testing it obtains of such products demonstrating compliance with this Section and
8 produce such copies to Davia within fifteen (15) days of receipt of reasonable request made in
9 writing from Davia, as long as such request is made within two (2) years after the Effective Date.

10 **3.2 Customer Notification**

11 No later than the Effective Date, Ontel shall send a memorandum or letter, electronic or
12 otherwise, to its primary sales contact/coordinator at any California Customer Ontel reasonably
13 understands to maintain more than thirty (30) units of Covered Product in a California retail store,
14 advising such individual that Covered Products should be labelled with a Proposition 65 warning
15 before any such Covered Product is sold in the California market or to a California Customer. The
16 correspondence shall either include a sheet of white background, adhesive Proposition 65 Warning
17 stickers, or a document suitable for local label printing, with the following warning in no less than
18 Book Antiqua, point 9 font (or its equivalent):

19 **⚠ WARNING:** This product can expose you to DEHP,
20 which is known to the State of
21 California to cause cancer and birth
22 defects or other reproductive harm. For
23 more information go to
24 www.P65Warnings.ca.gov


25 or

26 **⚠ WARNING:** Cancer and Reproductive Harm -
27 www.P65Warnings.ca.gov


28 **3.3 Product Packaging Labels**

1 No later than the Effective Date, Ontel shall not sell or ship any Covered Product that is not
2 Phthalate Free to a California Customer unless such Covered Product is shipped with the product
3 package label set forth hereafter.


4 **3.3.1** Each label utilized by Ontel for any Covered Product sold by Ontel to a California
5 Customer after the Effective Date shall be prominently placed either on the front, exterior surface of
6 the product or where other health and safety warnings are located, with such conspicuousness as
7 compared with other words, statements, designs, or devices as to render it likely to be read and
8 understood by an ordinary individual under customary conditions *before* purchase or use. The label
9 shall state:

10  **WARNING:** This product can expose you to DEHP,
11 which is known to the State of
12 California to cause cancer and birth
13 defects or other reproductive harm. For
more information go to
www.P65Warnings.ca.gov

14 or

15  **WARNING:** The vinyl card holders in this product can
16 expose you to DEHP, which is known to
the State of California to cause cancer and
17 birth defects or other reproductive harm.
For more information go to
www.P65Warnings.ca.gov

18 or

19  **WARNING:** Cancer and Reproductive Harm -
20 www.P65Warnings.ca.gov

21 **3.3.2 Internet Website Warning**

22 As of the Effective Date, Ontel asserts it is not selling the Covered Product on the Internet.
23 Nonetheless, if, subsequent to the Effective Date, any website owned and/or operated by Ontel sells
24 the Covered Product, such website shall include a written warning given in conjunction with the
25 sale of the Covered Product that appears: (a) on the same web page on which a Covered Product is
26 displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page
27 as the price for any Covered Product; or (d) on one (1) or more web pages displayed to a purchaser
28 during the checkout process. One of the following warning statements shall be used and appear in

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

4 **▲ WARNING:** This product can expose you to DEHP,
5 which is known to the State of California
6 to cause cancer and birth defects or other
7 reproductive harm. For more information
8 go to www.P65Warnings.ca.gov.

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

11 **▲ WARNING:** Products identified on this page with the
12 following symbol ▼ can expose you to
13 DEHP, which is known to the
14 State of California to cause cancer and
15 birth defects or other reproductive
16 harm. For more information go to
17 www.P65Warnings.ca.gov.

16 **4. MONETARY PAYMENTS**

17 **4.1 Civil Penalty**

18 As a condition of settlement of all claims referred to in this Agreement, Ontel shall
19 cause to be paid a total of \$5,000 in civil penalties in accordance with California Health & Safety
20 Code § 25249.12(c)(1) & (d), with seventy-five percent (75%) of the penalty remitted to the California
21 Office of Environment Health Hazard Assessment (“OEHHHA”)(3,750) and the remaining twenty-
22 five percent (25%) of the penalty remitted to Davia (\$1,250).

23 **4.2 Augmentation of Penalty Payments**

24 For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon
25 Ontel and its counsel for accurate, good faith reporting to Davia of the nature and amounts of
26 relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents
27 to Ontel competent and credible evidence that the Covered Products have been distributed by Ontel
28 to California Customers in sales volumes materially different (>25%) than those identified by Ontel

1 prior to the Effective Date and Ontel does not provide Davia with competent and credible evidence
2 to dispute such claim, then Ontel shall be liable for an additional penalty amount of ten-thousand
3 dollars (\$10,000.00). Ontel shall also be liable, in accordance with the requirements of Code of Civil
4 Procedure Section 1021.5, for any reasonable additional attorney fees expended by Davia in
5 discovering such additional retailers or sales. Davia agrees to provide Ontel with a written demand,
6 including Davia's evidence supporting any claim for a materially different sales volume for all such
7 additional penalties and attorney fees under this Section. Davia agrees any attorney fee demand
8 shall be supported by time records as required by California law. After service of such demand,
9 Ontel shall have thirty (30) business days to either pay the additional civil penalty and fee amount
10 demanded or negotiate with Davia as to an agreed amount of fees and penalties to be paid and pay
11 such fees and penalties in accordance with Section 4.4. Should the thirty (30) business day period
12 pass without resolution between the Parties and payment of additional penalties and fees, Davia
13 shall be entitled to file an action for breach of this Agreement in which the sole issue for resolution
14 by the Court shall be whether Covered Products were distributed in California by Ontel in sales
15 volumes materially different (>25%) than those identified by Ontel prior to the Effective Date. The
16 prevailing Party on such action shall be entitled to all reasonable attorney fees and costs in
17 accordance with the requirements of Code of Civil Procedure Section 1021.5, relating to such claim.
18 Davia represents that as of the Effective Date she does not have such information.

19 Should the Parties agree to an additional civil penalty within the thirty-day period but be
20 unable to agree on the amount of attorney fees and costs due to Davia under this Section, the Parties
21 shall attempt, in good faith, to mediate the dispute within the following sixty (60) calendar day
22 period. If the Parties cannot resolve the dispute in mediation or achieve mediation within the sixty
23 (60) calendar day period, then Davia may file an appropriate court action for recovery of fees and/or
24 costs expended in discovering additional sales and reporting them to Ontel in accordance with this
25 Section and each Party shall bear their own fees and costs associated with such action.

1 **4.3 Reimbursement of Davia’s Fees and Costs**

2 The Parties acknowledge Davia and her counsel offered to resolve this dispute without
3 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
4 issue to be resolved after the material terms of this Agreement have been settled. Ontel then
5 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
6 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Davia
7 and her counsel under general contract principles and the private attorney general doctrine codified
8 at California Code of Civil Procedure Section 1021.5, for all work performed in this matter, except
9 fees that may be incurred on appeal. Under these legal principles, Ontel shall cause to be paid to
10 Davia’s counsel the amount of \$30,000 for fees and costs incurred in investigating, litigating, and
11 enforcing this matter. Such payment shall be made payable to “Sheffer Law Firm.”

12 **4.4 Payment Procedures**

13 The Parties understand Plaintiff will file a motion to approve this settlement pursuant to
14 Section 7 of this Agreement. As of the Effective Date, and until such time as Ontel receives electronic
15 or other notice that this settlement has been approved by the Court in which the Action is pending,
16 Ontel shall maintain, in its immediate possession, an amount of cash no less than one hundred and
17 ten percent (110%) of the settlement payments Ontel has agreed to remit pursuant to Section 4.1 and
18 Section 4.3 of this Agreement.

19 Within ten (10) business days of the date Plaintiff provides electronic mail notice to counsel
20 for Ontel that the Court has approved this Agreement, Ontel’s counsel shall deliver the Section 4.1
21 and 4.3 settlement payments to Plaintiff’s counsel as follows:

- 22 1. a civil penalty check payable to “OEIHA” (EIN: 68-0284486, Memo line “Prop 65
23 Penalties, 2017-00259”), in the amount of \$3,750;
- 24 2. a civil penalty check payable to “Susan Davia” (Tax ID and W9 to be supplied in
25 advance, Memo line “Prop 65 Penalties, 2017-00259”) in the amount of \$1,250;
- 26 3. an attorney fees and costs reimbursement check pursuant to Section 4.3, in the amount
27 of \$30,000, payable to “Sheffer Law Firm” (EIN 55-08-58910, W9 to be supplied in advance,
28 Memo line “2017-00259”).

1 All penalty payments shall be delivered to the Sheffer Law Firm at the following address:

2 Sheffer Law Firm
3 Attn: Proposition 65 Controller
4 81 Throckmorton Ave., Suite 202
5 Mill Valley, CA 94941.

6 If applicable, Ontel shall deliver all Section 4.2 additional civil penalty and attorney fee/cost
7 payments on or before the date agreed upon pursuant to Section 4.2 or ordered by the Court, to
8 Plaintiff's counsel as follows:

- 9 1. a civil penalty check in the amount of seventy-five percent (75%) of the penalty
10 agreed upon or ordered by the Court pursuant to Section 4.2 payable to "OEHHA" (EIN: 68-
11 0284486, Memo line "Prop 65 Penalties, 2017-00259");
- 12 2. a civil penalty check in the amount of twenty-five percent (25%) of the penalty agreed
13 upon or ordered by the Court pursuant to Section 4.2 payable to "Susan Davia" (EIN: to be
14 supplied upon request, W9 to be supplied in advance), Memo line "Prop 65 Penalties, 2017-
15 00259"); and
- 16 3. An attorney fee and cost reimbursement check, in the amount agreed upon or
17 ordered by the Court pursuant to Section 4.2 payable to "Sheffer Law Firm" (EIN 55-08-
18 58910, W9 to be supplied in advance, Memo line "2017-00259").

19 All penalty and fee/cost payments to be paid by Ontel in accordance with Section 4.2 shall be
20 delivered to the Sheffer Law Firm at the following address:

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

25 Ontel shall be liable for payment of interest, at a rate of ten percent (10%) simple interest, for
26 all amounts due and owing from it under this Section that are not received by Sheffer Law Firm
27 within five (5) business days of the due date for such payment. Davia shall be responsible for
28 delivering to the California Office of Environmental Health Hazard Assessment any civil penalty
check payable to OEHHA.

1 **4.5 Issuance of 1099 Forms**

2 After this Agreement has been executed and settlement funds have been transmitted to
3 Davia’s counsel, by no later than January 31, 2020, Ontel shall cause three (3) separate 1099 forms to
4 be issued, as follows:

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

8 (b) The second 1099 shall be issued to Davia in the amount paid pursuant to
9 Section 4.1 whose address, W9 and tax identification number shall be furnished to
10 Ontel upon request; and

11 (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in
12 the amount paid pursuant to Sections 4.1 and 4.2 (if applicable).

13 **5. CLAIMS COVERED AND RELEASED**

14 **5.1 DAVIA’S RELEASE OF ONTEL**

15 **5.1.1** This Agreement is a full, final, and binding resolution between Davia and Ontel of
16 any violation of Proposition 65 that has or could have been asserted by Davia on behalf of herself,
17 her representatives or attorneys, against Ontel, its parent entities, subsidiaries, divisions, employees,
18 officers, directors, executives, managers, partners, members, vendors (including upstream entities
19 and each entity to whom Ontel directly distributed or sold Covered Products, including but not
20 limited to Rite Aid) and manufacturers of Covered Products as of the Effective Date, including but
21 not limited to: Ashok Khubani, Anita Khubani, Amar Khubani and Sonam Khubani, as well all
22 persons and entities involved in the sourcing, manufacturing, supply, storage, advertising,
23 marketing, development, distribution and/or sale of the Covered Products (collectively,
24 “Releasees”) based on their alleged failure to warn consumers and/or retailers about alleged
25 exposures to DEHP from Covered Products sold and/or offered for sale by Ontel into California
26 prior to the Effective Date. Ontel’s compliance with this Agreement shall be deemed compliance
27 with Proposition 65 as to the Covered Products.

28 **5.1.2** Davia also, in her individual capacity, provides a general release herein which shall

1 be effective as a full and final accord and satisfaction, as a bar to all claims, actions and causes of
2 action, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out
3 of the subject matter of the Notice as to Covered Products sold by Ontel or Releasees into California
4 prior to the Effective Date. Davia acknowledges she is familiar with Section 1542 of the California
5 civil code, which provides:

6
7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
8 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
9 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
10 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
11 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
12 OR RELEASED PARTY.

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

20 This Section 5 release shall not release any obligations created by or set forth in this
21 Agreement. This Section 5 release is expressly limited to claims that arise under Proposition 65, as
22 such claims relate to Ontel's alleged failure to warn about exposures to or identification of the Listed
23 Chemical contained in the Covered Products sold by Ontel prior to the Effective Date.

24 **5.2 ONTEL RELEASE OF DAVIA**

25 Ontel, its past and current agents, representatives, attorneys, successors, and/or assignees,
26 hereby waives all claims against Davia and her attorney for actions taken or statements made (or
27 those that could have been taken or made) by Davia and her attorney through execution of this
28 Agreement, whether in the course of investigating the Claims, seeking to enforce Proposition 65
against it in this matter, or with respect to the Covered Products. Ontel acknowledges it is familiar
with Section 1542 of the California Civil Code, which provides:

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

Ontel expressly waives and relinquishes all rights and benefits which it may have under, or which may be conferred on it by Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters identified in this Section 5.2. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any additional or different claims or facts arising out of the released matters.

5.3 ENFORCEMENT

After the Effective Date, prior to bringing any motion, order to show cause, or other proceeding regarding the Covered Products and/or this Agreement, Davia shall provide Ontel with a Notice of Violation (“NOV”) for each Covered Product alleged to be in violation. The NOV shall include the date of the alleged violation(s), city and state of sale, name of vendor(s), proof of purchase(s), photograph(s) of the Covered Product(s)(so Ontel may verify authenticity), and any test data obtained by Davia regarding each Covered Product. Davia shall take no further action regarding any alleged violation nor seek any monetary recovery for herself, her past and current representatives, agents, attorneys, successors and/or assigns if, within thirty (30) business days of receiving the NOV, Ontel demonstrates to Davia or her authorized representative: (a) the Covered Product(s) were distributed, sold, or offered by Ontel before the Effective Date; (b) Ontel directed the retailer, vendor, or distributor of the Covered Product(s) to take corrective action by either removing the Covered Product(s) from California store shelves or placing an appropriate warning sticker on the Covered Product(s) sold or offered for sale in California within thirty (30) calendar days from the date of service of the NOV; (c) the Covered Products do not contain the identified hazardous chemical; or (d) a Proposition 65 warning sticker or warning was located on the Covered Product at the time of sale; (e) at the time of Ontel’s sale of the allegedly violative product to the

1 retail distributor, Ontel had no reasonable belief the Covered Product was to be sold or distributed
2 in California.

3 **6. SEVERABILITY**

4 If, subsequent to the Effective Date, any provision of this Agreement is found by a court to
5 be unenforceable and is removed from this Agreement, the validity of the other provisions of this
6 Agreement shall remain in full force and effect unless the Court finds that any unenforceable
7 provision is not severable from the remainder of this Agreement.

8 **7. COURT APPROVAL**

9 This Agreement is effective upon execution but must also be approved by the Court. If this
10 Agreement is not approved by the Court in its entirety, the Parties shall confer to determine whether
11 to modify its terms and resubmit it for approval. In conferring, the Parties agree to undertake any
12 actions reasonably necessary to amend and/or modify this Agreement to further the mutual intent
13 of the Parties at the time this Agreement was executed.

14 The Agreement shall become null and void if, for any reason, it is not approved and entered
15 by the Court, as it is executed, within one (1) year after it has been fully executed by the Parties.

16 **8. GOVERNING LAW**

17 This Agreement shall be governed by the laws of the State of California. Any action brought
18 by either Party concerning this Agreement shall be brought in the California Superior Court venued
19 in Marin County, California. In the event Proposition 65 is repealed or rendered expressly
20 inapplicable to the Covered Products by a binding court decision, then Ontel may provide written
21 notice to Davia of any asserted change in the law and make a properly noticed motion to the Marin
22 County Superior Court to be relieved from further obligations under this Agreement.

23 **9. NOTICE**

24 When any Party is entitled to receive notice under this Agreement, the notice shall be sent
25 by FedEx (or other tracked delivery service) or electronic mail to the following:

26 For Ontel Products Corporation to:
27
28

1 Caroline Kinsey
2 General Counsel, Vice President of Compliance and Brand Protection
3 Ontel Products Corporation
4 21 Law Drive
Fairfield, NJ 07004
ckinsey@ontel.com

5 For Davia to:
6 Proposition 65 Coordinator
7 Sheffer Law Firm
81 Throckmorton Ave., Suite 202
9 Mill Valley, CA 94941

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

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

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

16 **11. MODIFICATION**

17 This Agreement may be modified only by written agreement of the Parties or court order.

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

19 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
20 is required to obtain judicial approval of this Agreement. In furtherance of obtaining such approval,
21 the Parties and their respective counsel agree to mutually employ their best efforts to support entry
22 of this Agreement as a full and final settlement agreement and obtain approval of this Agreement
23 by the Court in a timely manner. Any effort to impede judicial approval of this Agreement shall
24 subject such impeding Party to liability for attorney fees and costs incurred by the Party seeking
25 approval of this Agreement.

26 **13. ENTIRE AGREEMENT**

27 This Agreement contains the sole and entire agreement and understanding of the Parties
28 with respect to the subject matter hereof and all prior discussions, negotiations, commitments, and
understandings between the Parties related hereto. No representations, oral or otherwise, express

1 or implied, other than those contained herein have been made by any Party. No other agreements
2 not specifically referred to herein, oral or otherwise, shall be deemed to exist or bind any Party. No
3 supplementation, modification, waiver, or termination of this Agreement shall be binding upon any
4 Party unless executed in writing by the Party to be bound. No waiver of any provision of this
5 Agreement shall be deemed or shall constitute a waiver of any other provision whether similar, nor
6 shall such waiver constitute a continuing waiver of such rights.

7 **14. ATTORNEYS' FEES**

8 **14.1** Should Davia or Ontel prevail on any motion, application for order to show cause, or
9 proceeding to enforce a violation of this Agreement, so long as that Party engaged in a good faith
10 attempt regarding the dispute, she or it shall be entitled to reasonable attorney fees and costs
11 incurred as a result of such motion, order, or application, consistent with C.C.P. § 1021.5.

12 **14.2** Except as otherwise specifically provided in the above paragraph and Section 4, each
13 Party shall bear its own costs and attorneys' fees in connection with the Notice.

14 **15. NEUTRAL CONSTRUCTION**

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

23 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

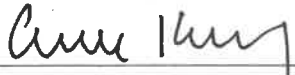

24 This Agreement may be executed in counterparts and by facsimile or portable document
25 format (PDF), each of which shall be deemed an original and all of which, when taken together,
26 shall constitute one and the same document.

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1 **17. AUTHORIZATION**

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

4 **IT IS SO AGREED**

<p>5</p> <p>6 Dated: April <u>4</u>, 2019</p> <p>7 </p> <p>8 <u>Caroline Kinsey, General Counsel</u> Ontel Products Corporation</p>	<p>6 Dated: April <u>4</u>, 2019</p> <p>7 </p> <p>8 <u>Susan Davia</u></p>
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