

1 Gregory M. Sheffer, State Bar No. 173124  
SHEFFER LAW FIRM  
2 81 Throckmorton Ave., Suite 202  
Mill Valley, CA 94941  
3 Telephone: 415.388.0911  
Facsimile: 415.388.9911

4 Attorneys for Plaintiff  
5 SUSAN DAVIA

**FILED**

DEC 19 2018

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

6  
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 ENVOGUE INTERNATIONAL, LLC, THE  
16 TJX COMPANIES, INC. DBA HOME GOODS  
and DOES 1-150,

17 Defendants.  
18

Case No. CIV 1704672

**JUDGMENT ON PROPOSITION 65  
SETTLEMENT**

Action Filed: December 22, 2017

1 In the above-entitled action, Plaintiff Susan Davia and Defendant EnVogue International,  
2 LLC, having agreed through their respective counsel that a judgment be entered pursuant to the  
3 terms of the Consent to Judgment Settlement Agreement entered into by the parties in resolution of  
4 this 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: JAN 19 2019

**STEPHEN P. FRECCERO**

---

Honorable Stephen Freccero  
Judge of the Superior Court

# EXHIBIT A

1 Gregory M. Sheffer, State Bar No. 173124  
SHEFFER LAW FIRM  
2 81 Throckmorton Ave., Suite 202  
Mill Valley, CA 94941  
3 Telephone: 415.388.0911  
Facsimile: 415.388.9911  
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  
10

11 SUSAN DAVIA,  
12 Plaintiff,  
13 v.  
14 ENVOGUE INTERNATIONAL, LLC, THE  
TJX COMPANIES, INC. DBA HOME GOODS  
15 and DOES 1-150,  
16 Defendants.

Case No. CIV1704672  
**CONSENT TO JUDGMENT SETTLEMENT  
AGREEMENT**  
Action Filed: December 22, 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 between  
4 Susan Davia, (“Davia”), on the one hand, and EnVogue International, LLC (“EnVogue” or  
5 “Defendant”), on the other hand, with Davia and EnVogue each referred to as a “Party” and  
6 collectively referred to as the “Parties.”

7 **1.2 Davia**

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 EnVogue**

12 EnVogue is alleged to have been responsible for the manufacture and distribution of the  
13 products subject to this Agreement. EnVogue is a person in the course of doing business for purposes  
14 of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§  
15 25249.6 *et seq.* (“Proposition 65”).

16 **1.4 General Allegations**

17 Davia alleges that EnVogue participated in the manufacture, distribution and/or sale, in the  
18 State of California, of bedding product display and storage cases made with PVC materials that  
19 exposed users to DEHP without first providing “clear and reasonable warning” under Proposition 65.  
20 DEHP is listed as a carcinogen and reproductive toxin pursuant to Proposition 65. DEHP shall be  
21 referred to hereinafter as the “Listed Chemical”.

22 **1.5 Notice of Violation**

23 On September 8, 2017, Davia served EnVogue and various public enforcement agencies with  
24 a document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed  
25 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
26 consumers of the presence of DEHP in vinyl bedding packaging products sold in California (the  
27 “Notice”).

28 / / /

1 EnVogue received the Notice. Each Party represents that, as of the date it executes this  
2 Agreement, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65  
3 enforcement action related to DEHP in the products identified in the Notice.

4 **1.6 Complaint**

5 On December 22, 2017, Davia filed a Complaint in the Superior Court of the State of California  
6 for the County of Marin, Case No. CIV1704672, alleging violations by EnVogue, TJX Companies, Inc.  
7 dba Home Goods, and Does 1-150 of Health and Safety Code § 25249.6 based on the alleged consumer  
8 exposures to DEHP in the Covered Packaging (defined below) (the “Action”).

9 **1.7 No Admission**

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

22 **1.8 Consent to Jurisdiction**

23 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior  
24 Court has jurisdiction over EnVogue as to the allegations contained in the Complaint, that venue is  
25 proper in County of Marin, and that the Marin County Superior Court has jurisdiction to enforce the  
26 provisions of this Agreement. As an express part of this Agreement, pursuant to Code of Civil  
27 Procedure Section 664.6 the Marin County Superior Court shall retain jurisdiction over the Parties to  
28 enforce the Agreement.

1 **2. DEFINITIONS**

2 **2.1** The term "Complaint" shall mean the December 22, 2017 complaint entitled *Davia*  
3 *v. EnVogue et al.*, Marin County Superior Court Case No. CIV1704672.

4 **2.2** The term "Covered Product" shall mean any EnVogue bedding product, including  
5 but not limited to, Nicole Miller Home kids and envoguekids comforter sets (all colors, styles and  
6 sizes).

7 **2.3** The term "Covered Packaging" shall mean any storage or packaging case made in  
8 whole or in part with vinyl or PVC in which Covered Products are shipped or sold.

9 **2.4** The term "Phthalate Free" Covered Packaging shall mean that each component of  
10 each Covered Packaging contains less than or equal to 1,000 parts per million ("ppm") of di(2-  
11 ethylhexyl phthalate) ("DEHP"), dibutyl phthalate ("DBP"), diisononyl phthalate ("DINP"),  
12 diisodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP") and butyl benzyl phthalate ("BBP") as  
13 determined by test results using Environmental Protection Agency ("EPA") testing methodologies  
14 3580A and 8270C or equivalent methodologies used by state or federal agencies for purposes of  
15 determining DEHP or other listed phthalate content in a solid substance.

16 **2.5** The term "California Customer" shall mean any customer that is located in  
17 California, has a California ship to address or that EnVogue reasonably understands maintains a retail  
18 store in California or sells to customers located in California.

19 **2.6** "Effective Date" shall mean October 15, 2018.

20 **3. INJUNCTIVE-TYPE RELIEF**

21 **3.1 Packaging Reformulation Commitment**

22 On or before the Effective Date, EnVogue shall provide the Phthalate Free phthalate concentration  
23 standards of Section 2.4 to its then-current vendors of any Covered Packaging and instruct such  
24 entities not to incorporate any raw or component materials that do not meet the Phthalate Free  
25 concentration standards of Section 2.4 into any Covered Packaging. EnVogue shall maintain copies  
26 of all vendor correspondence relating to the Phthalate Free concentration standards for two (2) years  
27 after the Effective Date and shall produce such copies to Davia within fifteen (15) days of receipt of  
28 reasonable request made in writing from Davia, as long as such request is made within two (2) years

1 after the Effective Date.

2           **3.1.1** After the Effective Date, EnVogue shall provide the Phthalate Free phthalate  
3 concentration standards of Section 2.4 to any New Vendors of any Covered Packaging and instruct  
4 such entities not to incorporate any raw or component materials that do not meet the Phthalate Free  
5 concentration standards of Section 2.4 into any Covered Packaging. "New Vendors" means vendors  
6 of Covered Packaging from whom EnVogue was not obtaining Covered Packaging as of the Effective  
7 Date. Prior to acquisition of any Covered Packaging from any New Vendor, EnVogue shall obtain a  
8 written confirmation and accompanying laboratory test result from the New Vendor demonstrating  
9 compliance with the Phthalate Free phthalate concentration standard in all materials comprising the  
10 Covered Packaging. For two (2) years after the Effective Date, for every Covered Packaging EnVogue  
11 manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from a  
12 New Vendor after the Effective Date, EnVogue shall maintain copies of all testing of such products  
13 demonstrating compliance with this section, shall maintain copies of all vendor correspondence  
14 relating to the Phthalate Free concentration standards and shall produce such copies to Davia within  
15 fifteen (15) days of receipt of reasonable request made in writing from Davia as long as such request  
16 is made within two (2) years after the Effective Date.

17           **3.1.2** As of the Effective Date, EnVogue shall not manufacture, cause to be  
18 manufactured or order any Covered Product with Covered Packaging for sale or distribution to  
19 California Customers unless such Covered Packaging is Phthalate Free.

20           **3.1.3** For every Covered Product with Covered Packaging EnVogue manufactures or  
21 causes to be manufactured for California Customers after the Effective Date, EnVogue shall maintain  
22 copies of all testing of such products demonstrating compliance with this section, shall maintain  
23 copies of all vendor correspondence relating to the Phthalate Free concentration standards of Section  
24 2.4 and shall produce such copies to Davia within fifteen (15) days of receipt of reasonable request  
25 made in writing from Davia, as long as such request is made within two (2) years after the Effective  
26 Date.

27           **3.2** Previously Distributed Covered Packaging.

28           **3.2.1** Customer Notification - No later than the Effective Date, EnVogue shall send a





1 Date and shall produce copies of such records within fifteen (15) days of receipt of a written request  
2 by Davia.

3 **3.3 Existing Inventory Packaging Packaging Labels**

4 For any inventory of bedding products in Covered Packaging obtained by EnVogue prior to  
5 the Effective Date, EnVogue shall not sell or ship any of such Covered Packaging that is not Phthalate  
6 Free to a California customer or retailer, or sell or ship any Covered Packaging that is not Phthalate  
7 Free to a customer or retailer that EnVogue has reason to know maintains retail outlets in the  
8 California, unless such Covered Packaging is shipped with product package label set forth hereafter.


9 Each such label utilized by EnVogue for any Covered Packaging shall be prominently placed  
10 either on the front, exterior surface of the clear packaging or where other health and safety warnings  
11 are located, with such conspicuousness as compared with other words, statements, designs, or devices  
12 as to render it likely to be read and understood by an ordinary individual under customary conditions  
13 *before* purchase or use.

14 **3.3.1 Covered Packaging Packaging Label.**


15 For all non-Phthalate Free Covered Packaging sold into, California, to a California customer  
16 or to any entity that EnVogue has reason to know either maintains retail outlets in California or is a  
17 distributor for any entity that maintains retail outlets in California, EnVogue shall affix a label to the  
18 Covered Packaging that provides one of the following warning statements:

19 **WARNING:** This packaging contains DEHP, a chemical known  
20 to the State of California to cause cancer and birth  
21 defects or other reproductive harm. *This packaging*  
22 *is not intended as a storage container. Please discard*  
*packaging after purchase;*

23 or

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

28 or

1  **WARNING** for vinyl product packaging - Cancer and birth  
2 defects or other reproductive harm. For more  
3 information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

4 **3.3.2 Internet Website Warning.**

5 EnVogue represents, as a material term of this Agreement, that it does not currently  
6 sell Covered Products with Covered Packaging direct to consumers on the Internet. If EnVogue  
7 commences direct sales of Covered Products with Covered Packaging to California consumers on  
8 the Internet, then, in addition to the warning required by Section 3.3.1, EnVogue shall provide the  
9 same warning on the Internet either: (a) on the same web page on which a Covered Product is  
10 displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page  
11 as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser  
12 during the checkout process.

13 **4. MONETARY PAYMENTS**

14 **4.1 Civil Penalty**

15 As a condition of settlement of all the claims referred to in this Agreement, EnVogue shall  
16 cause to be paid a total of \$7,000 in civil penalties in accordance with California Health & Safety Code  
17 § 25249.12(c)(1) & (d).

18 **4.2 Augmentation of Penalty Payments**

19 For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon  
20 EnVogue and its counsel for accurate, good faith reporting to Davia of the nature and amounts of  
21 relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents  
22 to EnVogue evidence that the Covered Products in Covered Packaging have been distributed by  
23 EnVogue in sales volumes materially different than those identified by EnVogue prior to execution of  
24 this Agreement, then EnVogue shall be liable for an additional penalty amount of \$10,000.00.  
25 EnVogue shall also be liable, in accordance with the requirements of Code of Civil Procedure section  
26 1021.5 for any reasonable, additional attorney fees expended by Davia in discovering such additional  
27 retailers or sales. Davia agrees to provide EnVogue with a written demand for all such additional  
28 penalties and attorney fees under this Section. After service of such demand, EnVogue shall have

1 thirty (30) days to agree to the amount of fees and penalties owing by EnVogue and submit such  
2 payment to Davia in accordance with the method of payment of penalties and fees identified in Section  
3 4.1 and 4.4. Should this thirty (30) day period pass without any such resolution between the parties  
4 and payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim  
5 for additional civil penalties pursuant to this Section and shall be entitled to all reasonable attorney  
6 fees and costs, in accordance with the requirements of Code of Civil Procedure section 1021.5, relating  
7 to such claim.

8 **4.3 Reimbursement of Plaintiff's Fees and Costs**

9 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without  
10 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue  
11 to be resolved after the material terms of the agreement had been settled. EnVogue then expressed a  
12 desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The  
13 Parties then attempted to (and did) reach an accord on the compensation due to Davia and her counsel  
14 under general contract principles and the private attorney general doctrine codified at California Code  
15 of Civil Procedure section 1021.5, for all work performed in this matter, except fees that may be  
16 incurred on appeal. Under these legal principles, EnVogue shall cause to be paid to Davia's counsel  
17 the amount of \$37,500 for fees and costs incurred investigating, litigating and enforcing this matter.  
18 Such payment shall be made payable to "Sheffer Law Firm".

19 **4.4 Payment Timing**

20 EnVogue shall deposit the required settlement funds with its counsel of record in this action  
21 according to the following schedule:

22 \$15,000 on or before September 30, 2018

23 \$15,000 on or before November 16, 2018

24 \$14,500 on or before December 14, 2018

25 EnVogue's counsel shall confirm receipt of each settlement fund deposit in writing (electronic  
26 mail acceptable) to plaintiff's counsel and, thereafter, hold the amounts paid in trust until such time  
27 as the Court approves this settlement contemplated by Section 7.

28 If EnVogue fails to make any payment pursuant to this Section, such failure shall be considered

1 a material breach of this Agreement and will provide plaintiff with the option to legally terminate this  
2 contractual settlement agreement so long as written notice (electronic mail acceptable) of such  
3 termination is provided to EnVogue's counsel of record in this action on or before any hearing to  
4 approve this settlement as contemplated by Section 7.

5 If plaintiff does not lawfully terminate this agreement prior to the hearing to approve this  
6 settlement as contemplated by Section 7, then, within five (5) business days of the date plaintiff  
7 provides electronic mail notice to counsel for EnVogue that the Court has approved this settlement,  
8 EnVogue's counsel shall deliver the settlement payments to plaintiff's counsel as follows:

- 9 1. a civil penalty check in the amount of \$5,250 payable to "OEHHA" (EIN: 68-0284486,  
10 Memo line "Prop 65 Penalties, 2017-02093");
- 11 2. a civil penalty check in the amount of \$1,750 payable to "Susan Davia" (Tax ID to be  
12 supplied, Memo line "Prop 65 Penalties, 2017-02093"); and
- 13 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the amount  
14 of \$37,500 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2017-02093")

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

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

20 EnVogue shall deliver all Section 4.2 additional civil penalty and attorney fee/cost payments  
21 by delivering such Section 4.2 settlement payments, on or before the date agreed upon pursuant to  
22 Section 4.2 or ordered by the Court, to Plaintiff's counsel as follows:

- 23 1. a civil penalty check in the amount of 75% of the penalty agreed upon or ordered by  
24 the Court pursuant to Section 4.2 payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65  
25 Penalties, 2017-02093");
- 26 2. a civil penalty check in the amount of 25% of the penalty agreed upon or ordered by  
27 the Court pursuant to Section 4.2 payable to "Susan Davia" (EIN: to be supplied upon request),  
28 Memo line "Prop 65 Penalties, 2017-02093"); and
3. An attorney fee and cost reimbursement check, in the amount agreed upon or ordered

1 by the Court pursuant to Section 4.2 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo  
2 line "2017-02093").

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

5 Sheffer Law Firm  
6 Attn: Proposition 65 Controller  
7 81 Throckmorton Ave., Suite 202  
8 Mill Valley, CA 94941

9 EnVogue shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts  
10 due and owing from it under this Section 4 that are not received by Sheffer Law Firm within five (5)  
11 business days of the due date for such payment.

12 **5. CLAIMS COVERED AND RELEASED**

13 **5.1 Davia's Releases of EnVogue**

14 **5.1.1.** This Agreement is a full, final, and binding resolution between Davia, on behalf  
15 of herself, her past and current agents, representatives, attorneys, successors, and/or assignees, and  
16 in the interest of the general public, and EnVogue and each of its owners, officers, directors, parent  
17 companies, subsidiaries, affiliates, assigns, predecessors, successors, attorneys, and all of its  
18 downstream distributors, customers, retailers, wholesalers, sellers, including TJX Companies, Inc. and  
19 any affiliate thereof ("Defendant Releasees") of any violation of Proposition 65 that has been or could  
20 have been asserted against Defendant Releasees regarding the failure to warn about exposure to any  
21 Listed Chemical arising in connection with any Covered Product in Covered Packaging  
22 manufactured, supplied, distributed, sold or shipped by Defendant Releasees prior to the Effective  
23 Date, regardless of when such Covered Packaging is sold to a California consumer. EnVogue's  
24 compliance with this Agreement shall be deemed compliance with Proposition 65 by Defendant  
25 Releasees with respect to the Listed Chemical in the Covered Packaging after the Effective Date.

26 **5.1.2** Davia, on behalf of herself, her past and current agents, representatives,  
27 attorneys, successors, and/or assignees, and in the interest of the general public, hereby waives, with  
28 respect to Covered Packaging manufactured, distributed, sold and/or offered for sale by Defendant  
Releasees prior to the Effective Date, all rights to institute or participate in, directly or indirectly, any

1 form of legal action and releases Defendant Releasees from all claims for violations of Proposition 65  
2 with respect to the Listed Chemical in the Covered Packaging as set forth in the Notice identified in  
3 Section 1.5 of this Agreement. Davia represents that as of the date of her execution of this consent  
4 judgment she is not aware of any other violations of Proposition 65 by Defendant.

5           **5.1.3** This Section 5.1 release shall not extend upstream to any entities that  
6 manufactured any Covered Packaging or any component parts thereof, or any distributors or  
7 suppliers who sold any Covered Packaging or any component parts thereof to EnVogue.

8           **5.2** EnVogue's Release of Davia

9           EnVogue waives any and all claims against Davia, her attorneys, and other representatives for  
10 any and all actions taken or statements made (or those that could have been taken or made) by Davia  
11 and her attorneys and other representatives, whether in the course of investigating claims or otherwise  
12 seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Covered  
13 Packaging.

14           **5.3** General Release

15           Each Party also provides, for the benefit of the other party and Defendant Releasees, a general  
16 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions,  
17 causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and  
18 demands of any Party of any nature, character or kind, known or unknown, suspected or unsuspected,  
19 arising out of the subject matter of the Action. Each Party acknowledges that it is familiar with Section  
20 1542 of the California Civil Code, which provides as follows:

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

26           Each Party expressly waives and relinquishes any and all rights and benefits that it may have  
27 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code  
28 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. In  
furtherance of such intention, the release hereby given shall be and remain in effect as a full and

1 complete release notwithstanding the discovery or existence of any such additional or different claims  
2 or facts arising out of the released matters.

3 6. COURT APPROVAL

4 This Agreement is effective upon execution but must also be approved by the Court. Upon  
5 approval of this Agreement by the Court, Davia shall dismiss the remaining defendants in this Action  
6 with prejudice on the condition such remaining defendants agree to waive all fees and costs in  
7 exchange for such dismissal. If the Court does not approve this Agreement in its entirety, the Parties  
8 shall meet and confer to determine whether to modify the terms of the Agreement and to resubmit it  
9 for approval. In meeting and conferring, the Parties agree to undertake any actions reasonably  
10 necessary to amend and/or modify this Agreement in order to further the mutual intention of the  
11 Parties in entering into this Agreement. The Agreement shall become null and void if, for any reason,  
12 it is not approved and entered by the Court, as it is executed, within one year after it has been fully  
13 executed by all Parties.

14 7. SEVERABILITY

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

19 8. GOVERNING LAW

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

24 9. NOTICES

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

27 For EnVogue International, LLC:

28 Nidhi Jain



1 EnVogue International, LLC  
2 230 Fifth Ave #1401  
3 New York, NY 10001

4 With copy to their counsel at:

5 Peg Carew Toledo  
6 Peg Carew Toledo, Law Corporation  
7 3001 Douglas Blvd., Suite 340  
8 Roseville, CA 95661  
9 Email: [peg@toledolawcorp.com](mailto:peg@toledolawcorp.com)

10 For Davia to:

11 Proposition 65 Coordinator  
12 Sheffer Law Firm  
13 81 Throckmorton Ave., Suite 202  
14 Mill Valley, CA 94941

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

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

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

20 **11. MODIFICATION**

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

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

24 The Parties stipulate to judgment being entered upon this Agreement. The Parties further  
25 acknowledge and agree that, pursuant to Health & Safety Code §25249.7, a noticed motion is required  
26 to obtain judicial approval of this Agreement. In furtherance of obtaining such approval, Davia and  
27 EnVogue, and their respective counsel, agree to mutually employ their best efforts to support the entry  
28 of this Agreement as a settlement agreement and obtain approval of the Agreement - sufficient to  
render an order approving this agreement - by the Court in a timely manner. Any effort by EnVogue  
to impede judicial approval of this Agreement shall subject such impeding party to liability for  
attorney fees and costs incurred by plaintiff or her counsel in their efforts to meet or oppose such  
EnVogue's impeding conduct. EnVogue's neutral position on matters raised by or during the court

1 approval proceeding shall not be deemed to be impeding behavior under this section. EnVogue  
2 further agrees to accept service of Notice of Entry of any order approving the settlement, and any  
3 judgment, by electronic mail service to its counsel at the electronic mail address identified in Section  
4 9.

5 **13. ENTIRE AGREEMENT**

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

15 **14. ATTORNEY'S FEES**

16 **14.1** Should Davia prevail on any motion, application for order to show cause or other  
17 proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable attorney  
18 fees and costs incurred as a result of such motion, order or application, if allowed under C.C.P.  
19 §1021.5. Should EnVogue prevail on any motion, application for order to show cause or other  
20 proceeding to enforce a violation of this Consent Judgment, EnVogue may be entitled to its reasonable  
21 attorney fees and costs incurred as a result of such motion, order or application upon a finding that  
22 Davia's prosecution of the motion or application lacked substantial justification. For purposes of this  
23 Agreement, the term substantial justification shall carry the same meaning as used in the Civil  
24 Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

25 **14.2** Except as specifically provided in the above paragraph and in Section 4.3, each Party  
26 shall bear its own costs and attorney's fees in connection with this action.

27 **14.3** Nothing in this Section 14 shall preclude a Party from seeking an award of sanctions  
28 pursuant to law.

1 15. NEUTRAL CONSTRUCTION

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

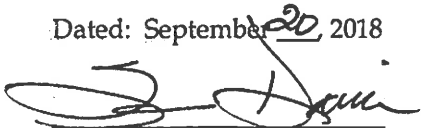
10 16. COUNTERPARTS, FACSIMILE SIGNATURES

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

14 17. AUTHORIZATION

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

18 IT IS SO AGREED.

|  |   |
|--|---|
| <p>19</p> <p>20 Dated: September <sup>20</sup>, 2018</p> <p>21 </p> <p>22 Plaintiff Susan Davia</p> | <p>20 Dated: September __, 2018</p> <p>21 _____</p> <p>22 Nidhi Jain</p> <p>23 EnVogue International, LLC</p> |
|--|---|

24  
25  
26  
27  
28

1 15. NEUTRAL CONSTRUCTION

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

10 16. COUNTERPARTS, FACSIMILE SIGNATURES

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

14 17. AUTHORIZATION

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

18 IT IS SO AGREED.

|   |  |
|---|--|
| <p>19 Dated: September __, 2018</p> <p>20</p> <p>21</p> <p>22 _____<br/>Plaintiff Susan Davia</p> <p>23</p> <p>24</p> | <p>20 Dated: September 21, 2018</p> <p>21</p> <p>22 <i>Nidhi</i><br/>_____<br/>Nidhi Jain<br/>EnVogue International, LLC</p> <p>23</p> <p>24</p> |
|---|--|

25  
26  
27  
28