

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 v.

15 RED STEER GLOVE COMPANY,
16 ANDERSEN DRIVE BUILDING SUPPLY CO.
17 and DOES 1-150,

18 Defendants.

Case No. CIV 1504314

**CONSENT TO JUDGMENT AS TO
DEFENDANT RED STEER GLOVE
COMPANY**

Action Filed: November 30, 2015
Trial Date: None Assigned

1 **1.** INTRODUCTION

2 **1.1** The Parties

3 This Consent to Judgment Settlement Agreement (“Consent Judgment”) is entered into by
4 and between Plaintiff Susan Davia, (“Davia” or “Plaintiff”) and Defendant Red Steer Glove
5 Company (“RED STEER” or “Settling Defendant”). Plaintiff and Settling Defendant are collectively
6 referred to as the “Parties.”

7 **1.2** Plaintiff

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

11 **1.3** Defendant

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

15 **1.4** General Allegations

16 Davia alleges that RED STEER manufactured, imported, distributed and/or sold, in the
17 State of California, certain types of PVC rainwear that exposed users to Di(2-ethylhexyl)phthalate
18 (“DEHP”) and Lead without first providing “clear and reasonable warning” under Proposition 65,
19 and certain PVC packaging for such rainwear that exposed users to DEHP without first providing
20 “clear and reasonable warning” under Proposition 65.

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

25 **1.5** Notice of Violation

26 On September 1, 2015, and June 7, 2016, Davia served RED STEER and Andersen Building
Supply Company (“Andersen”) with Proposition 65 60-Day Notices of Violation and requisite
Certificates of Merit that provided public enforcers and these entities with notice of alleged

1 violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of the
2 DEHP and Lead in and on their PVC rainwear and rainwear case products sold in California (AG
3 Notice 2015-00898).

4 ANDERSEN and RED STEER each received the September 1, 2015, and June 7, 2016, Notices
5 of Violation (hereafter "Notice"). To the best of the Parties' knowledge, no public enforcer is
6 diligently prosecuting a Proposition 65 enforcement action related to the Listed Chemical in the
7 covered products, as identified in the Notice.

8 **1.6** Complaint

9 On November 30, 2015, Davia, acting in the interest of the general public in California, filed
10 a Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV
11 1504314, alleging that RED STEER, ANDERSEN and Does 1-150 violated Health & Safety Code §
12 25249.6 by exposing California consumers to the Listed Chemical allegedly contained in certain
13 PVC rainwear and rainwear case products without first providing a Proposition 65 warning (the
14 "Complaint").

15 **1.7** No Admission

16 This Agreement resolves claims that are denied and disputed by Settling Defendant. The
17 Parties enter into this Agreement pursuant to a full and final settlement of any and all claims
18 between the Parties for the purpose of avoiding prolonged litigation. Settling Defendant denies the
19 material factual and legal allegations contained in the Notice and Complaint, maintains that it did
20 not knowingly or intentionally or otherwise expose California consumers to the Listed Chemical
21 through the reasonably foreseeable use of the Covered Product, and contends that all products it
22 has manufactured, distributed and/or sold in California have been and are in compliance with all
23 applicable laws, and are completely safe for their intended use. Nothing in this Agreement shall be
24 construed as an admission by Settling Defendant of any fact, finding, issue of law, violation of law
25 or that Settling Defendant is a person in the course of doing business pursuant to H&S Code
26 Section 2524.11; nor shall compliance with this Agreement constitute or be construed as an
admission by Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law,
such being specifically denied by Settling Defendant. However, notwithstanding the foregoing,

1 this section shall not diminish or otherwise affect Settling Defendant’s obligations, responsibilities,
2 and duties under this Consent Judgment.

3 **1.8** Consent to Jurisdiction

4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
5 jurisdiction over RED STEER as to the allegations contained in the Complaint, that venue is proper
6 in County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
7 Consent Judgment. As an express part of this Consent Judgment pursuant to C.C.P. §664.6, the
8 Court in which this action was filed shall retain jurisdiction over the Parties to enforce the Consent
9 Judgment until performance in full of the terms hereof.

10 **2.** DEFINITIONS

11 **2.1** The term “Complaint” shall mean the November 30, 2015, Complaint, Marin
12 County Superior Court Case No. CIV150314.

13 **2.2** The term “Covered Product 1” means any RED STEER brand PVC rainwear
14 product, excluding Covered Product 2, that Settling Defendant manufactures, distributes, and/or
15 offers for sale to California consumers including, but not limited to, Red Steer Glove Company
16 PVC Rainsuit (#046065935055).

17 **2.3** The term “Covered Product 2” means any clear PVC single product
18 display/packaging for RED STEER brand PVC rainwear products that Settling Defendant
19 manufactures, distributes, and/or offers for sale to California consumers including, but not limited
20 to, Red Steer Glove Company PVC Rainsuit case (#046065935055).

21 **2.4** The term “Effective Date” shall mean July 22, 2016.

22 **2.5** The term “DEHP Free” shall mean less than or equal to 1,000 parts per million
23 (“ppm”) of DEHP, in any accessible component of any Covered Product 1 or Covered Product 2,
24 determined through testing by an accredited laboratory using Environmental Protection Agency
25 (“EPA”) testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal
26 or state agencies to determine the presence, and measure the quantity, of DEHP in a solid
substance.. The term “Lead Free” shall mean less than or equal to 100 parts per million of Lead in
any accessible material or component of any Covered Product 1, determined by a minimum of

1 duplicate quality controlled tests by an accredited laboratory using EPA testing methodologies
2 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
3 presence, and measure the quantity, of Lead in a solid substance.

4 **2.6** “Manufactured” and “manufactures” have the meaning defined in Section 3(a)(10)
5 of the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)], as amended from time to
6 time.

7 **3. NON-MONETARY RELIEF**

8 **3.1 Reformulation Commitment**

9 **3.1.1** No later than July 30, 2016, RED STEER shall provide the DEHP Free phthalate
10 concentration standards of Section 2.5 to its then-current vendors of any Covered Product 1 and
11 Covered Product 2 that will be sold in California, and instruct its vendors not to incorporate any
12 raw or component materials in such products that do not meet the DEHP Free concentration
standards of Section 2.5.

13 **3.1.2** No later than July 30, 2016, RED STEER shall provide the Lead Free concentration
14 standards of Section 2.5 to its then-current vendors of any Covered Product 1 that will be sold in
15 California, and instruct its vendors not to incorporate any raw or component materials in such
16 products that do not meet the Lead Free concentration standards of Section 2.5.

17 **3.1.3** No later than September 15, 2016, RED STEER shall not manufacture or cause to be
18 manufactured, order or cause to be ordered, or distribute or cause to be distributed for sale in
19 California any Covered Product 1 or Covered Product 2 that is not DEHP Free.

20 **3.1.4** No later than September 15, 2016, RED STEER shall not manufacture or cause to be
21 manufactured, order or cause to be ordered, or distribute or cause to be distributed in California
any Covered Product 1 that is not Lead Free.

22 **3.1.5** For every Covered Product 1 and Covered Product 2 ordered, caused to be ordered,
23 manufactured or caused to be manufactured for distribution or sale in California after September
24 15, 2016, RED STEER shall maintain copies of all testing of such products demonstrating
25 compliance with this section, shall maintain copies of all vendor correspondence relating to the
26

1 DEHP Free and Lead Free concentration standards and shall produce such copies to Davia within
2 fifteen (15) days of receipt of written request from Davia.

3 **3.2** Previously Obtained or Distributed Covered Products.

4 **3.2.1** Customer Notification - No later than the Effective Date, RED STEER shall send a
5 letter, electronic or otherwise ("Notification Letter") to: (1) each California customer to which it,
6 after January 1, 2015, supplied any Covered Product 1 or Covered Product 2; (2) each U.S. customer
7 that RED STEER reasonably understands sells Covered Product 1 or Covered Product 2 in
8 California and (3) any other California customer and/or retailer that RED STEER reasonably
9 understands or believes has any inventory of either Covered Product 1 or Covered Product 2 for
10 sale in California. The Notification Letter shall advise the recipient that Covered Product 1
11 contains DEHP and Lead, and that Covered Product 2 contains DEHP, chemicals listed under
12 California's Proposition 65. The Notification letter shall direct recipient that all Covered Product 1
13 and Covered Product 2 must be labelled with a clear and reasonable Proposition 65 warning before
14 it is sold in the California market. The Notification Letter shall include a sheet of white
15 background, adhesive Proposition 65 Warning stickers with the following warning in no less than
16 Book Antiqua, point 9 font (or its equivalent):

16 **WARNING:** this product contains chemicals
17 known to the State of California to cause cancer,
18 birth defects or other reproductive harm

18 The Notification Letter shall require written confirmation from the recipient, within 15 days of
19 mailing, that all such inventory has been labelled with the warning language identified in this
20 section.

21 **3.2.2** Settling Defendant shall maintain records of compliance correspondence, or other
22 communication confirming compliance with § 3.2.1 for one (1) year from the Effective Date and
23 shall produce copies of such records within fifteen (15) days of written request by Davia.

24 **3.3** RED STEER Warning Obligations

25 RED STEER certifies that it has already commenced a warning program whereby all
26 Covered Product 1 and Covered Product 2 designated for sale into California are labelled with a
Proposition 65 warning. As of the Effective Date, and until September 15, 2016, RED STEER shall

1 not sell or ship any Covered Product to a California vendor or retailer, or sell or ship any Covered
2 Product to a vendor or retailer that RED STEER reasonably understands will offer the products for
3 sale in California, unless such Covered Products either meet the Lead free and DEHP free
4 standards of this Consent Judgment or are sold or shipped with one of the clear and reasonable
5 warnings set forth hereafter.

6 Each warning shall be prominently placed with such conspicuousness as compared with
7 other words, statements, designs, or devices as to render it likely to be read and understood by an
8 ordinary individual under customary conditions *before* purchase or use. Each warning shall be
9 provided in a manner such that the consumer or user understands to which *specific* Covered
10 Product the warning applies, so as to minimize the risk of consumer confusion.

11 (a) **Retail Store Sales.**

12 (i) **Product Labeling.** For all Covered Products that do not meet the Lead Free
13 and DEHP Free standards of this Consent Judgment sold to any entity that RED STEER reasonably
14 understands will offer the products for sale in California, RED STEER shall affix a warning to the
15 labeling or directly on the Covered Product that states:

16 **WARNING:** This product contains chemicals known to
17 the State of California to cause cancer,
18 birth defects or other reproductive harm.

19 (b) **Mail Order Catalog and Internet Sales.** For all Covered Products that do not meet
20 the Lead Free and DEHP Free standards of this Consent Judgment sold by RED STEER via mail
21 order catalog or the Internet to California customers, RED STEER shall include a warning in the
22 catalog or within the website, identifying the specific Covered Product to which the warning
23 applies, as specified in Sections 3.2(b)(i) and (ii) below.

24 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order
25 catalog must be in the same type size or larger than the Covered Product description text within
26 the catalog. The following warning shall be provided on the same page and in the same location as
the display and/or description of the Covered Product:

WARNING: This product contains chemicals known to
the State of California to cause cancer,

1 birth defects or other reproductive harm.

2 Where it is impracticable to provide the warning on the same page and in the same location as the
3 display and/or description of the Covered Product, RED STEER may utilize a designated symbol
4 to cross reference the applicable warning and shall define the term “designated symbol” with the
5 following language on the inside of the front or back cover of the catalog or on the same page as
6 any order form for the Old Covered Product(s):

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

11 The designated symbol must appear on the same page and in close proximity to the display
12 and/or description of the Covered Product. On each page where the designated symbol appears,
13 RED STEER must provide a header or footer directing the consumer to the warning language and
14 definition of the designated symbol.

15 If RED STEER elects to provide warnings in any mail order catalog, then the warnings must
16 be included in all catalogs offering to sell one or more Covered Products in California printed after
17 the Effective Date.

18 (ii) **Internet Website Warning.** A warning must be given in conjunction with
19 the sale of any Covered Products by RED STEER that do not meet the Lead Free and DEHP Free
20 standards of this Consent Judgment via the Internet, provided it appears either: (a) on the same
21 web page on which a Covered Product is displayed; (b) on the same web page as the order form for
22 a Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one or
23 more web pages displayed to a purchaser during the checkout process. The following warning
24 statement shall be used and shall appear in any of the above instances adjacent to or immediately
25 following the display, description, or price of the Covered Product for which it is given in the same
26 type size or larger than the Covered Product description text:

WARNING: This product contains chemicals known to
the State of California to cause cancer,
birth defects or other reproductive harm.

Alternatively, the designated symbol may appear adjacent to or immediately following the display,

1 description, or price of the Covered Product for which a warning is being given, provided that the
2 following warning statement also appears elsewhere on the same web page, as follows:

3 **WARNING:** Products identified on this page with the
4 following symbol ▼ contain chemicals known
5 to the State of California to cause cancer, birth
6 defects or other reproductive harm.

7 **3.4 Elimination of Warning Option**

8 After September 15, 2016, RED STEER shall not distribute or otherwise sell any Covered
9 Product 1 in California unless it is DEHP and Lead Free and shall not sell any Covered Product 2 in
10 California that is not DEHP Free regardless of whether a Proposition 65 warning accompanies the
11 product.

12 **4. MONETARY PAYMENTS**

13 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

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

19 **4.2 Augmentation of Penalty Payments**

20 For purposes of the penalty assessment under this Agreement, Davia is relying entirely
21 upon RED STEER and its counsel for accurate, good faith reporting to Davia of the nature and
22 amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers
23 and presents to RED STEER evidence that the Covered Products have been distributed by RED
24 STEER in sales volumes to California materially different than those identified by RED STEER
25 prior to execution of this Agreement, then the Parties shall have a period of 30 days to meet and
26 confer concerning such evidence, and RED STEER shall have the opportunity to present to Plaintiff
any evidence to the contrary. If the Parties can agree on an appropriate disposition, then RED
STEER shall submit payment of any agreed additional civil penalties and attorney’s fees related to
investigating and alleging sales activity materially different from that disclosed by RED STEER
prior to the execution of this Agreement within 30 days in accordance with the method of payment

1 of penalties and fees specified in Sections 4.1 and 4.4. If the Parties cannot agree on an appropriate
2 disposition within 30 days, Davia shall be entitled to file a formal legal claim for additional
3 penalties according to proof for breach of this contract, and should Davia prevail she shall be
4 entitled to her reasonable attorney fees and costs relating to such claim to the extent consistent
5 with California Code of Civil Procedure Section 1021.5. Should RED STEER prevail in opposing
6 any such claim, RED STEER shall be entitled to its reasonable attorney's fees in opposing the
7 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
11 issue to be resolved after the material terms of the agreement had been settled. Settling Defendant
12 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms
13 had been finalized. The Parties then attempted to (and did) reach an accord on the compensation
14 due to Davia and her counsel under general contract principles and the private attorney general
15 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in
16 this matter, except fees that may be incurred on appeal. Under these legal principles, RED STEER
17 shall pay the all-inclusive amount of \$30,500 for fees and costs incurred investigating, litigating
18 and enforcing this matter, including the fees and costs incurred (and yet to be incurred)
19 negotiating, drafting, and obtaining the Court's approval of this Consent Judgment in the public
20 interest.

21 **4.4 Payment Timing; Payments Held In Trust**

22 RED STEER shall deliver all settlement payment funds required by this Consent Judgment
23 to its counsel within ten days of the date that this Agreement is fully executed by the Parties.
24 Settling Defendant's counsel shall confirm receipt of settlement funds in writing to plaintiff's
25 counsel and, thereafter, hold the amounts paid in trust until such time as the Court approves this
26 Consent Judgment as contemplated by Section 7.

Within five business days of the date the Court approves the settlement, settling
defendant's counsel shall deliver the settlement payments it has held in trust to plaintiff's counsel

1 as follows:

- 2 1. a civil penalty check in the amount of \$2,625 payable to "OEHHA" (EIN: 68-
3 0284486, Memo line "Prop 65 Penalties, 2015-00898");
- 4 2. a civil penalty check in the amount of \$875 payable to "Susan Davia" (EIN: to be
5 supplied, Memo line "Prop 65 Penalties, 2015-00898"); and
- 6 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the
7 amount of \$30,500 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line
8 "2015-00898")

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

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

12 RED STEER shall be liable for payment of interest, at a rate of 10% simple interest, for all
13 amounts due and owing from it under this Section that are not received by Sheffer Law Firm
14 within five business days of the due date for such payment. Plaintiff shall have the sole
15 responsibility for transmitting OEHHA's civil penalty check to OEHHA.

16 **5. CLAIMS COVERED AND RELEASE**

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

18 **5.1.1** This Consent Judgment is a full, final, and binding resolution between Davia, on
19 behalf of herself, and in the public interest, and her past and current agents, representatives,
20 attorneys, successors, and/or assignees, and RED STEER and its attorneys, successors, wholesalers,
21 retailers, licensors, assigns and any party or entity to whom RED STEER has distributed Covered
22 Product 1 or Covered Product 2 who has sold such products in California (including but not
23 limited to Andersen Building Supply and Village Supply)(collectively "Defendant Releasees") of
24 any actual or alleged violation of Proposition 65 that has been or could have been asserted against
25 Defendant Releasees regarding the failure to warn about exposure to any Listed Chemical arising
26 in connection with any Covered Product 1 or Covered Product 2 manufactured, sourced,
distributed, or sold by Defendant Releasees prior to the Effective Date. Settling Defendant's

1 compliance with this Agreement shall constitute compliance with Proposition 65 with respect to the
2 Listed Chemical in the Covered Products manufactured, sourced, distributed, or sold after the
3 Effective Date.

4 **5.1.2** Davia, on behalf of herself, her past and current agents, representatives, attorneys,
5 successors, and/or assignees, and in the interest of the general public, hereby waives with respect
6 to Covered Products all rights to institute or participate in, directly or indirectly, any form of legal
7 action and releases all claims, including, without limitation, all actions, and causes of action, in law
8 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or
9 expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any
10 nature whatsoever, whether known or unknown, fixed or contingent (collectively "claims"),
11 against Defendant Releasees that arise under Proposition 65 or any other statutory or common law
12 claims that were or could have been asserted in the public interest, as such claims relate to
13 Defendant Releasees' alleged failure to warn about exposures to either Listed Chemical contained
14 in any Covered Products.

15 Davia, in her individual capacity, provides a general release herein, on behalf of herself,
16 her past and current representatives and attorneys, which shall be effective as a full and final
17 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,
18 attorneys' fees, damages, losses, claims, liabilities and demands of Davia, of any nature, character
19 or kind, known or unknown, suspected or unsuspected, arising out of Covered Products
20 manufactured, distributed or sold by RED STEER or the Defendant Releasees up through the
21 Effective Date. Davia acknowledges that she is familiar with section 1542 of the California civil
22 code, which provides as follows:

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

27 Davia, in her individual capacity, on behalf of herself, her past and current representatives
28 and attorneys, expressly waives and relinquishes any and all rights and benefits that she may have
29 under, or which may be conferred on her by the provisions of Section 1542 of the California Civil
30 Code as well as under any other state or federal statute or common law principle of similar effect,

1 to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released
2 matters. In furtherance of such intention, excepting Section 4.2, the release hereby given shall be
3 and remain in effect as a full and complete release notwithstanding the discovery or existence of
4 any such additional or different claims or facts arising out of the released matters.

5 This Section 5.1 release as it applies to entities other than RED STEER is expressly limited to
6 any alleged violations that occur prior to April 30, 2016, and does not release any other person,
7 party or entity from any liability for any violation of Proposition 65 regarding any Covered
8 Products that occurs after April 30, 2016.

9 The Parties further understand and agree that this Section 5.1 release shall not extend
10 upstream to any entities that manufactured any Covered Product or any component parts thereof,
11 or any distributors or suppliers who sold any Covered Products or any component parts thereof to
12 Settling Defendant.

13 **5.1.3** Upon court approval of this Consent Judgment, the Parties waive their
14 respective rights to a hearing or trial on the allegations of the Complaint.

15 **5.2** Settling Defendant's Release of Davia

16 **5.2.1** Settling Defendant waives any and all claims against Davia, her attorneys, and
17 other representatives for any and all actions taken or statements made (or those that could have
18 been taken or made) by Davia and her attorneys and other representatives, whether in the course of
19 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
20 and/or with respect to the Covered Products.

21 **5.2.2** Settling Defendant also provides a general release herein which shall be effective as
22 a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
23 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any Settling
24 Defendant of any nature, character or kind, known or unknown, suspected or unsuspected, arising
25 out of the subject matter of the Action. Settling Defendant acknowledges that it is familiar with
26 Section 1542 of the California Civil Code, which provides as follows:

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

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

8 **6. SEVERABILITY**

9 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
10 Consent Judgment are determined by a court to be unenforceable, so long as all Parties agree, the
11 validity of the enforceable provisions remaining shall not be adversely affected, unless the Court
12 finds that any unenforceable provision is not severable from the remainder of the Agreement.

13 **7. COURT APPROVAL**

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

20 The Agreement shall become null and void if, for any reason, it is not approved and entered
21 by the Court, as it is executed, within nine months after it has been fully executed by all Parties. If
22 the Agreement becomes null and void after any payment of monies under this agreement , such
23 monies shall be returned to Settling Defendant by payment of such monies to counsel for Settling
24 Defendant in trust for that Settling Defendant.

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

1 **8. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California.

3 **9. NOTICES**

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

6 For Red Steer Glove Company to:

7 Luke Atwood II, President
8 Red Steer Glove Company
2895 Valpak Rd Ne
Salem, OR, US - 97303

9 With copy to their counsel at:

10 J. Robert Maxwell
11 Rogers Joseph O'Donnell PLC
311 California Street, 10th Floor
12 San Francisco, CA 94104

13 For Davia to:

14 Proposition 65 Coordinator
15 Sheffer Law Firm
81 Throckmorton Ave., Suite 202
16 Mill Valley, CA 94941

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

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

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

22 **11. MODIFICATION**

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

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

26 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
is required to obtain judicial approval of this Consent Judgment. In furtherance of obtaining such
approval, Davia and Settling Defendant, and their respective counsel, agree to mutually employ

1 their best efforts to support the entry of this Consent Judgment by the Court in a timely manner.
2 Any effort by Settling Defendant to impede judicial approval of this Agreement shall subject it to
3 liability for attorney fees and costs incurred by Plaintiff or her counsel in their efforts to meet or
4 oppose such Settling Defendant's impeding conduct.

5
6 **13. ENTIRE AGREEMENT**

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

16 **14. ATTORNEY'S FEES**

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

1 **14.2** Except as specifically provided in the above paragraph and in Section 4.3, each
2 Party shall bear its own costs and attorney’s fees in connection with this Action and the entry of
3 this Consent Judgment.

4 **14.3** Nothing in this Section 14 shall preclude a Party from seeking an award of
5 sanctions pursuant to law.

6 **15. Neutral Construction**

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

16 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

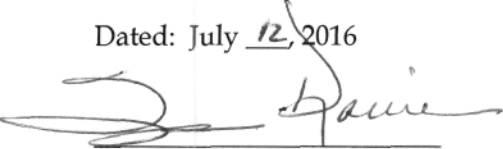
17 This Agreement may be executed in counterparts and by facsimile or portable document
18 format (PDF), each of which shall be deemed an original, and all of which, when taken together,
19 shall constitute one and the same document.

20 **17. AUTHORIZATION**

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

24 **IT IS SO AGREED**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

<p>Dated: July <u>12</u>, 2016</p> <p></p> <p>Plaintiff Susan Davia</p>	<p>Dated: July __, 2016</p> <p>_____ Luke Atwood, President Red Steer Glove Company</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26

Dated: July __, 2016

Plaintiff Susan Davia

Dated: July 19, 2016



Luke Atwood, President
Red Steer Glove Company