

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Susan Davia, (“Davia”) and Vinylux (“Vinylux”) with Davia and Vinylux collectively referred to as the “Parties.”

1.2 Davia

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

1.3 Vinylux

Vinylux is a small, Pennsylvania company doing business in California through sale of recycled vinyl record products. Vinylux denies that it is a person in the course of doing business under the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”). However, for the limited and exclusive purpose of this Settlement Agreement, for the limited and exclusive purpose of resolving Davia’s claims against vendors and customers of Vinylux, and to avoid expenditure of resources litigating this issue, Vinylux is not asserting this denial.

1.4 General Allegations

Davia alleges that Vinylux and Paper Source, Inc. (“Paper Source”) manufactured, distributed and/or sold, in the State of California, recycled vinyl record products, including coasters and diaries, that exposed users to Lead without first providing “clear and reasonable warning” under Proposition 65. Lead is listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical” or “Lead.”

1.5 Notice of Violation

On September 2, 2015, Davia served Vinylux, Paper Source and various public enforcement agencies with a document entitled “60-Day Notice of Violation” (“Notice”) that provided public enforcers, Paper Source and Vinylux with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of Lead, a toxic chemical found in their Products sold in

California. Vinylux and Paper Source received the 60-Day Notice of Violation. Vinylux represents that, as of the date it executes this Agreement, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to Lead in its Products, as identified in the 60-Day Notice.

1.6 No Admission

This Agreement resolves claims that are denied and disputed by Vinylux. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Vinylux denies the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to Lead through the reasonably foreseeable use of the Covered Products and otherwise contends that, to Vinylux's actual knowledge, all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission by Vinylux of any fact, finding, issue of law, or violation of law; nor shall compliance with this Agreement constitute or be construed as an admission by the Vinylux of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Vinylux. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Vinylux's obligations, responsibilities, and duties under this Agreement.

1.7 Consent to Jurisdiction

For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over Vinylux as to the allegations in the 60-Day Notice received from Davia, and this Agreement, that venue is proper in County of Marin, and that the Marin County Superior Court has jurisdiction to enforce the provisions of this Agreement. As an express part of this Agreement, pursuant to Code of Civil Procedure Section 664.6 the Marin County Superior Court has jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

2. DEFINITIONS

2.1 The term “Compliant Warning” shall have the meaning provided in section 3.2(a).

2.2 The term “Covered Products” means any recycled vinyl record products, including coasters and diaries, manufactured, caused to be manufactured, distributed or caused to be distributed by Vinylux.

2.3 “Effective Date” shall mean March 15, 2016.

3. INJUNCTIVE-TYPE RELIEF

3.1 Products No Longer in Vinylux’s Control

Vinylux certifies that on or before about November 16, 2015, Vinylux sent a letter, (“Notification Letter”) to each California retail customer to whom it supplied Covered Products at any time since January 1, 2013. The Notification Letter advised the recipient that the Covered Products allegedly “contain lead and therefore must be labeled with a Proposition 65 Warning.” The Notification Letter further advised that “[a] Prop 65 Warning sticker should be applied to unlabeled stock, or a Prop 65 Warning sign should be displayed alongside the product on store shelves.” A sheet of Proposition 65 Warning stickers was enclosed with the Notification Letter. Finally, the Notification Letter advised that Vinylux had begun placing a Proposition 65 Warning label on all Covered Products being sold directly into California.

During November, 2015, Vinylux also contacted each of its vendors and retail customers located outside of California that it reasonably believes distributes and sells Covered Products into California and advised that such products require a Compliant Warning, offered to provide stickers for labeling existing stock, and informed such vendors and retail customers that Vinylux would be labeling all such Covered Products in future shipments.

During November, 2015, Vinylux additionally advised its online vendors and retail customers selling Covered Products into California that such products require a Compliant Warning and recommended such Compliant Warning be provided electronically to California consumers and

customers prior to sale either on product description pages or checkout pages or via hyperlink to a separate web page containing a Compliant Warning.

Beginning in 2016, Vinylux includes a written notice about Proposition 65 with the packing list or invoice to every customer nationwide advising that a Compliant Warning is required for sale or shipment of Vinylux Covered Products into California.

If Vinylux discovers, within one year of the Effective Date, the identity of (1) any California retail customer to whom it supplied Covered Products at any time since January 1, 2013 (2) any of its vendors and retail customers located outside of California that it reasonably believes distributes and sells Covered Products into California or (3) any online vendors and retail customers selling Covered Products into California, that did not receive the above-referenced contact or advise, then Vinylux shall, within fifteen (15) days of such discovery, contact such customer or vendor and provide the above-referenced notice.

3.2 Product Warnings

Vinylux certifies that beginning on October 9, 2015, Compliant Warnings were, and at the time of this Agreement continue to be, affixed to all Covered Products sold and shipped to any California vendor, retailer or consumer customer and all Covered Products sold and shipped to a vendor or retail customer outside California that Vinylux reasonably understands maintains retail outlets in California. After the Effective Date of this Agreement, Vinylux shall provide Compliant Warnings as provided in this section 3.2 for all Covered Products.

(a) **Compliant Warnings.** Warnings provided by Vinylux in association with Covered Products shall comply with Proposition 65 and its regulations, as such may be amended or modified from time to time (“Compliant Warning”). Use of language and methods of transmission specified in Proposition 65 or its regulations shall constitute a Compliant Warning. The following is one example of a Compliant Warning language:

WARNING: This product contains LEAD, a chemical known to the State

of California to cause birth defects or other reproductive harm.

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

(b) California Sales. Vinylux agrees to affix a Compliant Warning to the packaging, labeling or directly on all Covered Products it sells and ships directly to vendors, retailers, or consumers located in California.

(c) Vendors Outside California with California Retail Outlets. For all Covered Products sold or shipped to a location outside California of any vendor that Vinylux reasonably understands maintains retail outlets in California, Vinylux agrees to affix a Compliant Warning to the labeling or directly on the Covered Product.

(d) Vendors Outside California without known California Retail Outlets. Vinylux agrees to notify its vendors located outside California without retail outlets in California known to Vinylux, that Proposition 65 requires Compliant Warnings on or with all Covered Products shipped or sold into California. Vinylux may, at its election, provide such notice on packing slips, invoices, order confirmations, mail, email, letter or other method, so long as such notice is provided for each category of Covered Product not previously sold or shipped to such Vendor outside California and also no less than once annually to each vendor.

(e) Mail Order Catalog and Internet Sales. For all Covered Products sold directly by Vinylux via its own mail order catalog or via the Internet through its own website to customers located in California, any such catalog or Internet site offering of any Covered Product for sale shall include a Compliant Warning in the catalog or within the website, identifying the specific Covered Product to which the warning applies, as specified in Sections 3.2(b)(i) and (ii) below.

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

Where it is impracticable to provide the Compliant Warning on the same page and in the same location as the display and/or description of the Covered Product, Vinylux may utilize a designated symbol to cross reference the applicable warning and shall define that “designated symbol” with the Compliant Warning on the inside of the front or back cover of the catalog or on the same page as any order form for the Old Covered Product(s). For Example:

WARNING: Certain products identified with this symbol ▼ contain a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or description of the Covered Product. On each page where the designated symbol appears, Vinylux must provide a header, a footer, or other means to direct the consumer to the warning language and definition of the designated symbol.

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

(ii) Internet Website Warning. A Compliant Warning must be given in conjunction with the sale of any Covered Products by Vinylux via the Internet, provided it appears either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same web page as the price for any Covered Product; (d) on one or more web pages displayed during the checkout process to a purchaser located in or shipping to California; or (e) on a separate web page displayed to the purchaser via a hyperlink labeled, “Notice to California Residents” on the product display page, order form, or any of the web pages displayed during

the checkout process. The Compliant Warning shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Covered Product for which it is given in the same type size or larger than the Covered Product description text.

Alternatively, a designated symbol may appear adjacent to or immediately following the display, description, or price of the Covered Product for which a warning is being given, provided that the Compliant Warning statement also appears elsewhere on the same web page. For Example:

WARNING: Certain products identified with this symbol ▼ contain a chemical known to the State of California to cause cancer, birth defects or other reproductive harm.

(f) **Modification of Proposition 65.** The Parties agree that the specifications for Compliant Warnings in this Settlement Agreement are consistent with Proposition 65 and its regulations as of the date of this Agreement. If modifications or amendments to Proposition 65 or its regulations after the Effective Date are inconsistent with, or provide warning specifications or options different from, the specifications in this Settlement Agreement, Vinylux may, no less than thirty (30) days after written notice to plaintiff of the proposed modification, modify the content and delivery methods of its warnings to conform to the modified or amended provisions of Proposition 65 or its regulations. In the event the Office of Environmental Health Hazard Assessment issues regulations or a Safe Use Determination establishing that no warning is required for vinyl records, or if a court determines that no warning is required for vinyl records, then Vinylux may, no less than thirty (30) days after written notice to plaintiff of its intent to stop providing Compliant Warnings under this Agreement, stop providing Proposition 65 warnings on its vinyl record products in conformance with such ruling. This paragraph is provided in recognition of Vinylux's small size and unique product line for the express purpose of reducing unnecessary complexity, confusion and cost associated with Vinylux's future compliance with Proposition 65, including the possibility of Proposition 65 enforcement from others based on warnings provided pursuant to this Settlement Agreement that are inconsistent with Proposition 65.

4. MONETARY PAYMENTS

4.1 Civil Penalty

In settlement of all the claims referred to in this Settlement Agreement, Vinylux shall pay a total of \$3,000.00 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Davia, as follows:

Vinylux shall issue separate checks to: (a) “OEHHA” (EIN: 68-0284486, Memo line “Prop 65 Penalties”) in the amount of \$2,250.00; and (b) “Sheffer Law Firm in Trust for Susan Davia” in the amount of \$750.00. All penalty payments shall be delivered to the addresses listed in Section 4.4 below.

4.2 Augmentation Of Penalty Payments

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon Vinylux and its counsel for accurate, good faith reporting to Davia of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents to Vinylux evidence that the Covered Products have been distributed by Vinylux in sales volumes materially different than those identified by Vinylux prior to execution of this Agreement, then Vinylux shall be liable for an additional penalty amount of \$10,000.00. Vinylux shall also be liable for any reasonable, additional attorney fees expended by Davia in discovering such additional retailers or sales. Davia agrees to provide Vinylux with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Vinylux shall have thirty (30) days to agree to the amount of fees and penalties owing by Vinylux and submit such payment to Davia in accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim for damages for breach of this contract and shall be entitled to all reasonable attorney fees and costs relating to such claim.

4.3 Reimbursement Of Davia's Fees And Costs

The Parties acknowledge that Davia and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Vinylux then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Davia and his counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, Vinylux shall pay Davia and his counsel, in accordance with the schedule below, the amount of \$21,500.00 for fees and costs incurred investigating, litigating and enforcing this matter. Vinylux shall issue a separate check for this payment to "Sheffer Law Firm", which check shall be delivered to the addresses listed in Section 4.4 below.

4.4 Payment Procedures

Payments by Vinylux pursuant to this Section shall be delivered as follows:

(a) All payments owed to Davia and OEHHA, pursuant to Sections 4.1 through 4.2, shall be delivered to the following payment address:

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

(b) All payments owed to Davia, pursuant to Section 4.3 shall be delivered by to the following payment address:

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

(c) All payments under Sections 4.1 and 4.2 shall be delivered on or before March 28, 2016.

Any failure by Vinylux to deliver any of the above-referenced payments to the Sheffer Law Firm by the required date shall result in imposition of a 10% simple interest assessment on the undelivered payment(s) until delivery.

4.5 Issuance Of 1099 Forms

After this Agreement has been executed and the settlement funds have been transmitted to Davia's counsel, Vinylux shall issue three separate 1099 forms, as follows:

- (a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Sections 4.1 and 4.2;
- (b) The second 1099 shall be issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2, whose address and tax identification number shall be furnished upon request; and
- (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section 4.3.

4.6 Other Settlements for the same products. In the event Davia reaches a settlement or judgment against any manufacturer of vinyl records on the basis of a violation of Proposition 65, Vinylux may apply to Davia, through her counsel, for a refund to Vinylux the amounts paid by Vinylux under paragraphs 4.1, 4.2 and 4.3 so as to avoid Davia's collection of duplicative payments for the same vinyl records. Such refund will only be upon proof by Vinylux that Vinylux received vinyl records from the settling manufacturer of vinyl records within the one year prior to September 1, 2015, and incorporated such vinyl records into a Covered Product and proof by Vinylux of the proportion of such received records compared to all vinyl records received by Vinylux in that same period. Any such refund shall be capped and limited by the same proportion applied to the monies paid to Davia under this Agreement. This provision is in recognition of the facts that Vinylux is not the original manufacturer of the vinyl records used in its products, vintage vinyl records are an

essential character of Vinylux's unique, hand-crafted products and so Vinylux recycles vintage vinyl records and does not purchase vinyl records from original manufacturers, Vinylux has no way to control or specify the content or formulation of vinyl records used in its Covered Products, and to the extent vinyl records are subject to Proposition 65, only the original manufacturers are capable of reformulating vinyl records.

5. RELEASES

5.1 DAVIA'S RELEASE OF VINYLUX

5.1.1 This settlement agreement is a full, final and binding resolution between Davia, and Vinylux, of any violation of Proposition 65 that was or could have been asserted by Davia on behalf of herself, her representatives or attorneys, against Vinylux, its directors, officers, employees, attorneys, and each entity to whom Vinylux directly or indirectly distributes or sells Covered Products, including, but not limited, to downstream vendors, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Releasees"), based on their failure to warn about alleged exposures to Lead contained in the Covered Products that were manufactured, distributed, sold and/or offered for sale by Vinylux in California before the Effective Date.

5.1.2 In further consideration of the promises and agreements herein contained, Davia on behalf of herself, her past and current representatives and attorneys, hereby waives all Davia's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Davia may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees, and attorney's fees, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to any chemicals, including Lead, in the Covered Products manufactured, distributed, sold and/or offered for sale by Vinylux before the Effective Date (collectively "claims"), against Vinylux and Releasees.

5.1.3 Davia also, in her individual capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorney's fees, damages, losses, claims, liabilities and demands of Davia, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by Vinylux or Releasees. Davia acknowledges that she is familiar with 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.

Davia, in her individual capacity expressly waives and relinquishes any and all rights and benefits that she may have under, or which may be conferred on her by the provisions of 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 he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, excepting Section 4.2, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

This Section 5.1 public interest release is expressly limited to those claims that arise under Proposition 65, as such claims relate to Vinylux's alleged failure to warn about exposures to or identification of Lead contained in the Covered Products as such claims are identified in the Proposition 65 60-Day Notice to Vinylux. This Section 5.1 private release by Davia is expressly limited to those claims that arise under Proposition 65, as such claims relate to all listed chemicals, including Lead, in Vinylux's Covered Products.

This Section 5.1 release is expressly limited to any alleged violations that occur prior to six months after the Effective Date, and does not release any Releasee, entity or individual besides Vinylux

from any liability for any violation of Proposition 65 regarding the Covered Products that occurs after six months from the Effective Date.

The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than Vinylux, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to Vinylux.

5.2 Vinylux's Release of Davia

The Release by Davia is mutual. Vinylux, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Davia and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Davia and her attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products. Vinylux acknowledges that it is familiar with 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.

Vinylux expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on him by the provisions of 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 he 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 complete release notwithstanding the discovery or existence of any such additional or different claims or facts

arising out of the released matters.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement Vinylux may ask Davia, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Davia agrees to reasonably cooperate with Vinylux and to use her best efforts, and that of her counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Vinylux will reimburse Davia and his counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$12,000.00, exclusive of fees and cost that may be incurred on appeal. Vinylux will remit payment to the Sheffer Law Firm, at the address set forth in Section 9 below. Such additional fees shall be paid by Vinylux within ten days after its receipt of monthly invoices from Davia for work performed under this paragraph, or upon such schedule as the parties agree. Any failure by Vinylux to timely pay Davia invoices under this Section shall result in the assessment of ten percent (10%) interest on any outstanding balance.

7. SEVERABILITY

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, unless the Court finds that any unenforceable provision is not severable from the remainder of the Agreement.

8. GOVERNING LAW

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

9. NOTICES

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

For Vinylux, to:

Jeff Davis, President
Vinylux
104 E. Moreland Ave
Philadelphia, PA 19118

With copy to their counsel at:

Wendy L. Manley, Esq.
Wendel, Rosen, Black & Dean, LLP
1111 Broadway, 24th Floor
Oakland, CA 94607

For Davia to:

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

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

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

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

11. MODIFICATION

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

12. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments,

and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a continuing waiver

13. ATTORNEY'S FEES

13.1 Should Davia prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable attorney's fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. § 1021.5. Should Vinylux prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Vinylux shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application upon a finding that Davia's prosecution of the motion or application lacked substantial justification. For purposes of this Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

13.2 Except as otherwise specifically provided herein, each Party shall bear its own costs and attorney's fees in connection with the Notice.

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

14. NEUTRAL CONSTRUCTION

Both Parties and their counsel have participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and

their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.

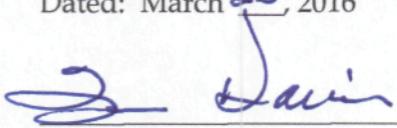
15. COUNTERPARTS, FACSIMILE SIGNATURES

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

16. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: March <u>23</u>, 2016</p>  <p>Susan Davia</p>	<p>Dated: March __, 2016</p> <hr/> <p>Jeff Davis, President Vinylux</p>
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their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.

15. COUNTERPARTS, FACSIMILE SIGNATURES

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

16. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: March __, 2016</p> <p>_____ Susan Davia</p>	<p>Dated: March 22 2016</p>  <p>Jeff Davis, President Vinylux</p>
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