

SETTLEMENT AGREEMENT
SUSAN DAVIA AG NOTICES 2015-01095, 2016-00539, 2016-01175, 2016-01532

1. INTRODUCTION

1.1 The Parties

This settlement agreement (“Agreement”) is entered into by and between Susan Davia, (“Davia” or “Plaintiff”) and notice recipient Lowe’s Home Centers, LLC. Plaintiff and Lowe’s are collectively referred to as the “Parties.”

1.2 Susan 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 General Allegations

Davia alleges that LG Sourcing, Inc., Lowe’s Companies, Inc., and Lowe’s Home Centers, LLC (collectively, “Lowe’s”), are persons in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

Davia also alleges that Lowe’s manufactured, imported, distributed and/or sold, in the State of California, certain types of PVC rainwear, packaging and PVC rainwear storage and display cases that exposed users to di(2-ethylhexyl)phthalate (DEHP), di(isodecyl) phthalates (DIDP) and di(isononyl)phthalate (DINP) without first providing “clear and reasonable” warnings under Proposition 65.

DEHP is listed as a carcinogen and a reproductive and developmental toxicant pursuant to Proposition 65. DINP is listed as a carcinogen pursuant to Proposition 65. DIDP is listed as a reproductive toxin pursuant to Proposition 65. Where appropriate, DEHP, DINP and DIDP shall be hereafter, collectively, referred to as “Listed Chemicals.”

1.4 Notices of Violation

On October 20, 2015, Davia served Lowe’s Companies, Inc. and LG Sourcing, Inc. with Proposition 65 60-Day Notice of Violation and requisite Certificate of Merit that provided public

enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of the DEHP in and on PVC rainwear, packaging and rainwear case products sold in California (AG Notice 2015-01095).

On June 7, 2016, Davia served Lowe's Companies, Inc. and LG Sourcing, Inc. with a supplemental Proposition 65 60-Day Notice of Violation and requisite Certificate of Merit that provided public enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of the DEHP, DINP and DIDP in and on PVC rainwear, packaging and rainwear case products sold in California (AG Notice 2016-00539).

On October 11, 2016, Davia served Lowe's Companies, Inc. and LG Sourcing, Inc. and alleged manufacturer Shanghai Lansheng Corp. ("SLC") with a second supplemental Proposition 65 60-Day Notice of Violation and requisite Certificate of Merit that provided public enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of the DEHP, DINP and DIDP in and on PVC rainwear, packaging and rainwear case products sold in California (AG Notice 2016-01175).

On December 19, 2016, Davia served Lowe's Home Centers, LLC with a third supplemental Proposition 65 60-Day Notice of Violation and requisite Certificate of Merit that provided public enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of the DEHP, DINP and DIDP in and on PVC rainwear, packaging and rainwear case products sold in California (AG Notice 2016-01532).

Collectively, the October 20, 2015 Notice, the June 7, 2016 Notice, the October 11, 2016 Notice and the December 19, 2016 Notice are referred to as the "Notices". To the best of the Parties' knowledge, no public enforcer is diligently prosecuting a Proposition 65 enforcement action related to the Listed Chemical in the Covered Products, as identified in the Notices.

1.5 No Admission

This Agreement resolves claims that are denied and disputed by Lowe's. 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. Lowe's denies the material factual and legal allegations contained in the Notices, maintains that it did not knowingly or intentionally or otherwise expose California consumers to the Listed Chemicals through the reasonably foreseeable use of the Covered Product and contends that all products it sells in California have been and are in compliance with all applicable laws, and are safe for their intended use. Nothing in this Agreement shall be construed as an admission by Lowe's 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 Lowe's of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Lowe's. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Lowe's obligations, responsibilities, and duties under this Agreement.

1.6 Consent to Jurisdiction

As an express part of this Agreement, this Agreement shall be considered as made pursuant to Code of Civil Procedure Section 664.6.

2. DEFINITIONS

2.1 The term "Covered Product" shall mean any SLC manufactured PVC rainwear products and associated packaging with the Master Gear brand name distributed, and/or offered for sale to California consumers by Lowe's including, but not limited to, PVC bibs, pants, raincoats, rainsuits and waterproof jackets.

2.2 The term "Effective Date" shall mean the date this Agreement is fully executed by the Parties.

2.3 The term "Phthalate Free" shall mean containing less than or equal to 1,000 parts per million ("ppm") of DEHP, DBP, DINP, DIDP, DnHP or BBP in any component of any Covered Product, determined through testing by an accredited laboratory using Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C, or equivalent methodologies utilized

by federal or state agencies to determine the presence, and measure the quantity, of phthalates in a solid substance.

2.4 The term “California Customer” shall mean any customer located in California, with a California ship to address or a California billing address.

3. NON-MONETARY RELIEF

3.1 Reformulation Commitment

3.1.1 As a material term of this Agreement, Lowe’s represents that it no longer purchases any Covered Product. Conditioned upon Lowe’s cessation of any future purchases of any Covered Product, Lowe’s shall have no warning obligation or reformulation requirement. Should Lowe’s resume the purchase of Products from SLC, Lowe’s shall condition the purchase of the covered products for sale in California on SLC either providing Phthalate Free Covered Product or Covered Product shipped with a clear and reasonable Proposition 65 warning on each such product with warning language as specified in the applicable regulations, as may be amended in the future.

3.2 Previously Obtained Inventory

3.2.1 Lowe’s Store and Warehouse Notification

After receipt of the Notice from Davia, Lowe’s took action to remove all inventory of Covered Product from California Lowe’s stores and refrain from any further sale of Covered Products to California Customers. As a material term of this Agreement, Lowe’s represents that, to its best knowledge, it no longer has any inventory of Covered Product available for sale in any Lowe’s California store. Conditioned upon this representation, Lowe’s shall have no further California store manager notification obligation under this Agreement.

3.3 Lowe’s Warning Obligations

Conditioned upon Lowe’s material representations that it no longer has any inventory of Covered Product available for sale in any Lowe’s California store and no longer purchases any Covered Product, Lowe’s shall have no Covered Product warning obligation under this Agreement.

4. MONETARY PAYMENTS

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

As a condition of settlement of all the claims referred to in this Agreement, Lowe's shall pay a total of \$3,500 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1) & (d).

4.2 Augmentation of Penalty Payments

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon Lowe's and its counsel for accurate, good faith reporting to Davia of the nature and amounts of recent sales of the Covered Products. If within nine (9) months of the Effective Date, Davia discovers and presents to Lowe's evidence that more than 1,000 units of the Covered Products have been sold by Lowe's in California in the year prior to the Effective Date, then the Parties shall have a period of 30 days to meet and confer concerning such evidence, and Lowe's shall have the opportunity to present to Plaintiff any evidence to the contrary. If the Parties can agree on an appropriate disposition, then Lowe's 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 Lowe's prior to the execution of this Agreement within 30 days in accordance with the method of payment of penalties and fees specified in Sections 4.1 and 4.4. If the Parties cannot agree on an appropriate disposition within 30 days, Davia shall be entitled to file a formal legal claim for additional penalties according to proof for breach of this contract, and should Davia prevail she shall be entitled to her reasonable attorney fees and costs relating to such claim to the extent consistent with California Code of Civil Procedure Section 1021.5. Should Lowe's prevail in opposing any such claim, Lowe's shall be entitled to its reasonable attorney's fees in opposing the claim.

4.3 Reimbursement of Plaintiff's Attorney Fees and Costs

Lowe's shall pay the amount of \$31,500 to the Sheffer Law Firm for fees and costs incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and securing execution of this Agreement in the public

interest.

4.4 Payment Procedure and Timing

Lowe's shall satisfy its obligation to pay civil penalties pursuant to Section 4.1 by delivery of a civil penalty check payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2016-01532"), in the amount of \$2,625 and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2016-01532") in the amount of \$875. Davia shall be responsible for delivering to the California Office of Environmental Health Hazard Assessment the civil penalty check payable to OEHHA.

Lowe's shall pay civil penalties pursuant to Section 4.2, if any, by checks payable to "OEHHA" and "Susan Davia" in the amounts agreed upon pursuant to Section 4.2 or as ordered by the Court.

Lowe's shall pay attorney fees and costs pursuant to Section 4.3 by a check payable to "Sheffer Law Firm" (Memo line "2016-01532") in the amount of \$31,500.

Lowe's shall pay attorney fees and costs, if any, pursuant to Section 4.2 by delivery of a check payable to "Sheffer Law Firm" (Memo line "2016-01532") in the amount determined pursuant to that section.

All Section 4.1 and Section 4.3 civil penalty and attorney fee/cost payments shall be delivered to plaintiff's counsel within thirty (30) business days after execution of this Agreement at the following address:

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

All Section 4.2 civil penalty and attorney fee/cost payments, if any, shall be delivered to plaintiff's counsel at the following address on or before the date agreed upon pursuant to that section or ordered by the Court:

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

Lowe's shall be liable for payment of interest, at a rate of 10% simple interest, for all

amounts due and owing from it under this Section that are not received by Sheffer Law Firm within two business days of the due date for such payment.

5. CLAIMS COVERED AND RELEASE

5.1 Davia's Releases of Lowe's

5.1.1 This Agreement is a full, final, and binding resolution between Davia, on behalf of herself, her attorneys, successors, and/or assignees, and Lowe's and its parents, subsidiaries divisions, shareholders, directors, members, officers, employees, representatives, agents, attorneys, predecessors, successors, and retailers (collectively "Defendant Releasees") of any actual or alleged violation of Proposition 65 that has been or could have been asserted against Defendant Releasees regarding the failure to warn about exposure to any Listed Chemical arising in connection with any Covered Product distributed, or sold by Defendant Releasees prior to the Effective Date. Lowe's compliance with this Agreement shall constitute compliance with Proposition 65 with respect to any Listed Chemicals in the Covered Products after the Effective Date.

5.1.2 Davia, also provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all claims, actions and causes of action, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notices as to Covered Products sold by Lowe's or Defendant Releasees into California prior to the Effective Date.

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, in behalf of herself and attorneys, 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.

The Parties further understand and agree that this Section 5.1 release shall not extend upstream to Shanghai Lansheng Corp., except as to those Covered Products distributed to and sold by Lowe's in California.

5.2 Lowe's Release of Davia

5.2.1 Lowe's waives any and all claims against Davia, 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 or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Covered Products.

5.2.2 Lowe's also 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, attorneys' fees, damages, losses, claims, liabilities and demands of any Lowe's of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Lowe's 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.

Lowe's expressly waives and relinquishes any and all rights and benefits that it may have under, or which may be conferred on it 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 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 complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

6. SEVERABILITY

If any of the provisions of this Agreement are determined by a court to be unenforceable, so long as all Parties agree, the validity of the enforceable provisions remaining shall not be adversely affected.

7. GOVERNING LAW

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

8. NOTICES

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

For Lowe's Home Centers, LLC to:

Legal Department
Lowe's Companies, Inc.
1000 Lowe's Boulevard
 Mooresville, North Carolina 28117

With copy to their counsel at:

Malcolm Weiss
Hunton Andrews Kurth, LLP
550 South Hope Street, Suite 2000
Los Angeles, CA 90071
mweiss@hunton.com

For Davia to:

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

Any Party may modify the person or 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 such as electronic mail.

9. 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) and to file a motion for approval of this Agreement.

10. MODIFICATION

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

11. ENTIRE AGREEMENT

This Settlement 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

12. ATTORNEY'S FEES

12.1 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 fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. §1021.5. Should Lowe's prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Lowe's shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application, or if opposing a motion brought by Davia 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.

12.2 Except as specifically provided in the above paragraph and in Sections 4.2 and 4.3, each Party shall bear its own costs and attorney’s fees in connection with this matter.

13. NEUTRAL CONSTRUCTION

All 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.

14. COUNTERPARTS, FACSIMILE SIGNATURES

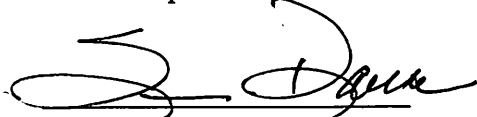
This Agreement may be executed in counterparts and by facsimile or portable document format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

15. 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

Dated: April 27, 2018



Plaintiff Susan Davia

Dated: April __, 2018

Lowe’s Home Centers, LLC
Rod Wanjala

justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

12.2 Except as specifically provided in the above paragraph and in Sections 4.2 and 4.3, each Party shall bear its own costs and attorney's fees in connection with this matter.

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15. AUTHORIZATION

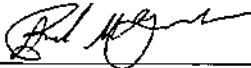
The undersigned parties and their counsel are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

IT IS SO AGREED

Dated: April __, 2018

Plaintiff Susan Davia

Dated: April 25, 2018



Lowe's Home Centers, LLC
Rod Wanjala