

Gregory M. Sheffer, Esq., State Bar No. 173124

SHEFFER LAW FIRM

81 Throckmorton Ave., Suite 202

Mill Valley, CA 94941

Telephone: (415) 388-0911

Facsimile: (415) 388-9911

Attorneys for Plaintiff

SUSAN DAVIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA

FOR THE COUNTY OF MARIN

UNLIMITED CIVIL JURISDICTION

SUSAN DAVIA,

Plaintiff,

v.

PROTECTIVE INDUSTRIAL PRODUCTS,
INC., GOLDEN STATE LUMBER and DOES
1-150,

Defendants.

Case No. CIV 1600177

STIPULATED SETTLEMENT AGREEMENT

Action Filed: January 15, 2016

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Stipulated Settlement Agreement pursuant to C.C.P. Section 664.6 (“Agreement”) is
4 entered into by and between Plaintiff Susan Davia, (“Davia” or “Plaintiff”) and Defendant Protective
5 Industrial Products, Inc. (“PIP” or “Defendant”); PIP and Davia shall be collectively referred to as the
6 “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 PIP employs 10 or more persons and is a person in the course of doing business for purposes
13 of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code
14 §§ 25249.5 *et seq.* and the regulations issued pursuant thereto (“Proposition 65”).

15 **1.4 General Allegations**

16 Davia alleges that PIP manufactured, distributed and/or sold, in the State of California,
17 certain types of PVC rainwear comprised of or made with components that allegedly exposed users
18 to Di(2-ethylhexyl)phthalate (“DEHP”) without first providing a “clear and reasonable warning” as
19 set forth in Proposition 65.

20 DEHP is listed as a reproductive and developmental toxicant pursuant to Proposition 65.
21 DEHP shall be hereafter referred to as the “Listed Chemical.”

22 **1.5 Notice of Violation**

23 On October 20, 2015, Davia served PIP with a Proposition 65 60-Day Notice of Violation (AG
24 Notice 2015-01098), together with a Certificate of Merit that provided public enforcers and these
25 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
26 consumers of the alleged presence of the DEHP in and on their PVC rainwear products sold in
27 California (hereafter the “Notice”).

28 PIP received the October 20, 2015 Notice of Violation. PIP and Davia represent that, as of the

1 date it executes this Agreement, it believes that no public enforcer is diligently prosecuting a
2 Proposition 65 enforcement action related to the Listed Chemical in the Covered Products, as
3 identified in the Notice.

4 **1.6 Complaint**

5 On January 15, 2016, Davia, acting in the interest of the California general public, filed a
6 Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV
7 1600177, alleging a violation by PIP and others of Health & Safety Code § 25249.6 based, *inter alia*, on
8 the alleged exposures to DEHP contained in certain PVC rainwear products.

9 **1.7 No Admission**

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

22 **1.8 Consent to Jurisdiction**

23 For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction over
24 PIP and Davia as to the allegations contained in the Complaint, that venue is proper in County of
25 Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Agreement. As
26 an express part of this Agreement, pursuant to C.C.P. §664.6, the Court in which this action was filed
27 shall retain jurisdiction over the parties to enforce the settlement until performance in full of the terms
28 of the settlement.

1 **2. DEFINITIONS**

2 **2.1** The term "Complaint" shall mean the January 15, 2016, Complaint, Marin County
3 Superior Court Case No. CIV1600177.

4 **2.2** The term "Covered Product" means any Falcon brand PVC raincoats and rainsuits
5 that PIP manufactures, distributes, and/or offers for sale to retailers, distributors, or consumers,
6 including, but not limited to, Falcon Raincoats (such as 201-300 and 205-300FR) and Falcon Rainsuits
7 (such as 201-100, 201-250, 201-350, 201-355, 201-360, 201-370, 205-370FR).

8 **2.3** The term "Effective Date" shall mean March 15, 2017.

9 **2.4** The term "Phthalate Free" shall mean a product contains less than or equal to 1,000
10 parts per million ("ppm") of each of these phthalates (DEHP, DINP, DIDP, DnHP and DBP), in any
11 component of the Covered Products, as determined by a minimum of duplicate quality controlled
12 tests by an accredited U.S. laboratory using Environmental Protection Agency ("EPA") testing
13 methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies to
14 determine the presence of, and measure the quantity of, phthalates in a solid substance.

15 **2.5** As used herein, "Manufactured" and "Manufacturer" have the meaning defined in
16 Section 3(a)(10 & 11) of the Consumer Product Safety Act ("CPSA") [15 U.S.C. § 2052(a)(10 & 11)], as
17 amended from time to time.

18 **3. NON-MONETARY RELIEF**

19 **3.1** Reformulation Commitment

20 **3.1.1** PIP represents as a material part of this settlement agreement that it has thoroughly,
21 and in good faith, investigated chemical reformulation of the Covered Products to reduce or
22 eliminate Proposition 65 listed phthalate plasticizers in the Covered Products. After this
23 investigation, PIP has concluded that no substitute chemicals for the listed Proposition 65
24 constituents of Covered Products are available that would allow PIP to manufacture the Covered
25 Products to its current standards for durability, safety and performance. As such, reformulation is
26 not a viable option at the present time and for the foreseeable future. Instead, PIP shall continue to
27 maintain a comprehensive customer notification and warning scheme for the Covered Products
28 currently in place as required by this Agreement. PIP agrees that, while it is in no way bound by this

1 Agreement to achieve Covered Product reformulation in the future if reasonable substitute chemicals
2 are not available, it will continue to evaluate alternative formulation of its rainwear products, in good
3 faith, to identify and incorporate reasonable substitute chemicals for the Proposition 65 Listed
4 Chemicals currently utilized in the Covered Products.

5 **3.1.2** As of the Effective Date, PIP shall only manufacture, cause to be manufactured, order,
6 cause to be ordered, sell or otherwise distribute, Covered Products to California, or to any entity that
7 PIP reasonably understands maintains a retail outlet in California, that are Phthalate Free as set forth
8 in Section 2.4 or include a Proposition 65 consumer health hazard warning pursuant to Section 3.3.

9 **3.1.3** For any Covered Products that PIP contends meets the reformulation standard of
10 Section 2.4 and therefore does not require a warning that is ordered, caused to be ordered,
11 manufactured or caused to be manufactured for distribution or sale in California after the Effective
12 Date, PIP shall maintain copies of all testing of such Covered Products demonstrating phthalate
13 content, shall maintain copies of all vendor correspondence relating to the Phthalate Free
14 concentration standards, and shall produce such copies to Davia within thirty (30) days of receipt of
15 written request from Davia.

16 **3.2** Previously Obtained or Distributed Covered Products.

17 **3.2.1** Customer Notification - No later than April 30, 2017, PIP shall send a letter, electronic
18 or otherwise ("Notification Letter") to: (1) each California customer ("customer" means person or
19 entity to whom PIP sells Covered Products) to which PIP, after January 1, 2015, supplied any Covered
20 Product; (2) each non-California customer to which PIP, after January 1, 2015, supplied any Covered
21 Product that PIP reasonably understands maintains any retail outlet in California and (3) any other
22 California customer that PIP actually knows has any inventory of any Covered Product. The
23 Notification Letter shall advise the recipient that Covered Product contains DEHP a chemical known
24 to the State of California to cause cancer, birth defects and other reproductive harm. The Notification
25 letter shall direct recipient to label all Covered Product with a clear and reasonable Proposition 65
26 warning before it is sold in the California market. The Notification Letter shall include a sheet of
27 white background, adhesive Proposition 65 Warning stickers with the following warning in no less
28 than Book Antiqua, point 9 font (or its equivalent):

1 **WARNING:** this product contains chemicals known to
2 the State of California to cause cancer and
3 birth defects or other reproductive harm

4 The Notification Letter shall require written confirmation from the recipient, within 15 days of
5 mailing, as to the number of Covered Product in their inventory and confirmation that all such
6 inventory has been labelled with the warning language identified in this section.

7 **3.2.2** Settling Defendant shall maintain records of compliance correspondence, inventory
8 reports or other communication confirming compliance with § 3.2.1 for three years (1,095 calendar
9 days) following the Effective Date and shall produce copies of such records upon written request by
10 Davia.

11 **3.3** PIP Warning Obligations

12 PIP certifies that it has already commenced a warning program whereby all Covered Product
13 designated for sale into California are labelled with a Proposition 65 warning. As of the Effective
14 Date PIP shall not sell or ship any Covered Product that is not Phthalate Free to any California
15 customer, vendor or retailer, or sell or ship any Covered Product to a customer, vendor or retailer
16 that PIP reasonably understands maintains retail outlets in California, unless such Covered
17 Products—to the extent they are going to be sold in California—are sold or shipped with one of the
18 clear and reasonable warnings set forth hereafter. However, if a Covered Product in PIP’s inventory
19 already contains a Proposition 65 warning that does not exactly match the warning requirements of
20 Section 3.3, and such product is shipped after the Effective Date, it does not have to be re-labeled
21 with a different warning and the existing warning shall be deemed in compliance with this
22 Agreement. In lieu of the warnings set forth herein, PIP and/or GSL may, at their option, provide
23 the safe harbor warnings established by the State of California and in effect at the time the Covered
24 Product is available for sale.

25 Each warning shall be prominently placed with such conspicuousness as compared with
26 other words, statements, designs, or devices as to render it likely to be read and understood by an
27 ordinary individual under customary conditions *before* purchase or use. Each warning shall be
28 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.

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

2 (i) **Product Labeling.** For all Covered Products sold at to any entity that PIP
3 reasonably understands maintains retail outlets in California, PIP shall affix a warning to the labeling
4 or directly on the Covered Product that states:

5 **WARNING:** This product contains chemicals known to
6 the State of California to cause cancer and
7 birth defects or other reproductive harm.

8 (b) **Mail Order Catalog and Internet Sales.** For all Covered Products sold by PIP via
9 mail order catalog or the Internet to customers located in California any such catalog or Internet site
10 offering any Covered Product for sale shall include a warning in the catalog or within the website,
11 identifying the specific Covered Product to which the warning applies, as specified in Sections
12 3.2(b)(i) and (ii) below.

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

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

20 Where it is impracticable to provide the warning on the same page and in the same location as the
21 display and/or description of the Covered Product, PIP may utilize a designated symbol to cross
22 reference the applicable warning and shall define the term "designated symbol" with the following
23 language on the inside of the front or back cover of the catalog or on the same page as any order form
24 for the Covered Product(s):

25 **WARNING:** Certain products identified with this
26 symbol ▼ contain chemicals known to the
27 State of California to cause cancer and
28 birth defects or other reproductive harm.

The designated symbol must appear on the same page and in close proximity to the display and/or

1 description of the Covered Product. On each page where the designated symbol appears, PIP must
2 provide a header or footer directing the consumer to the warning language and definition of the
3 designated symbol.

4 If PIP elects to provide warnings in any mail order catalog, then the warnings must be
5 included in all catalogs printed after the Effective Date offering to sell one or more Covered Products
6 that are in inventory as of the Effective Date.

7 (ii) **Internet Website Warning.** A warning must be given in conjunction with the
8 sale of any Covered Products by PIP via the Internet to any customer with a shipping address in
9 California, provided it appears either: (a) on the same web page on which a Covered Product is
10 displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page
11 as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser
12 during the checkout process. The following warning statement shall be used and shall appear in any
13 of the above instances adjacent to or immediately following the display, description, or price of the
14 Covered Product for which it is given in the same type size or larger than the Covered Product
15 description text:

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

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

21 **WARNING:** Products identified on this page with the
22 following symbol ▼ contain chemicals
23 known to the State of California to cause
24 cancer and birth defects or other
25 reproductive harm.

26 **3.4** GSL Warning Obligations

27 No later than the Effective Date, GSL shall check their stock and inventory of Covered Product
28 and pull any such Covered Product that does not have the Proposition 65 warning printed on its label
or packaging. Within one week of the Effective Date, GSL shall provide a written confirmation of
completion of this task and identification of the number of each Covered Product pulled for lack of

1 warning.

2 As of the Effective Date, GSL shall not sell or ship any Covered Product in California or to a
3 California address, unless such Covered Products are sold or shipped with one of the clear and
4 reasonable warnings set forth hereafter.

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

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

11 (i) **Product Labeling.** For all Covered Products sold from a California GSL retail
12 facility, to the extent not already done by another entity, GSL shall affix a warning to the labeling or
13 directly on each Covered Product that states:

14 **WARNING:** This product contains chemicals known to
15 the State of California to cause cancer and
16 birth defects or other reproductive harm.

17 **4. MONETARY PAYMENTS**

18 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

19 As a condition of settlement of all the claims referred to in this Agreement, PIP shall pay a
20 total of \$12,000 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1)
21 & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
22 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Davia.

23 **4.2 Augmentation of Penalty Payments**

24 For purposes of the penalty assessment under this Agreement, plaintiff is relying entirely
25 upon defendant for accurate, good faith reporting to plaintiff of the nature and amounts of relevant
26 sales activity. If within nine (9) months of the Effective Date, plaintiff discovers and presents to
27 Defendant evidence that any type of Covered Product was distributed by PIP prior to execution of
28 this Agreement in sales volumes materially different than those identified by Defendant, then
Defendant shall be liable for an additional penalty amount of \$10,000. Defendant shall also be liable

1 for any reasonable, additional attorney fees expended by Plaintiff in discovering applicable
2 additional sales of Defendant. Plaintiff agrees to provide Defendant with a written demand for all
3 such additional penalties and attorney fees under this Section. After service of such demand,
4 Defendant shall have thirty (30) days to attempt to agree with Plaintiff as to the amount of fees and
5 penalties owing and submit such payment to Plaintiff in accordance with the method of payment of
6 penalties and fees identified in Sections 4.4. Should this thirty (30) day period pass without any
7 resolution between the Parties and payment of such additional penalties and fees, Plaintiff shall be
8 entitled to file a formal legal claim for additional civil penalties pursuant to this Section and shall be
9 entitled to all reasonable attorney fees and costs relating to such claim if it prevails. If the claim of
10 Plaintiff is not sustained in whole or in part, then Plaintiff shall be liable to Defendant for its
11 reasonable attorney's fees and costs incurred in defending against the claim.

12 **4.3 Reimbursement of Plaintiff's Fees and Costs**

13 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
14 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
15 issue to be resolved after the material terms of the agreement had been settled. Defendant then
16 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
17 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Davia
18 and her counsel under general contract principles and the private attorney general doctrine codified
19 at California Code of Civil Procedure section 1021.5, for all work performed in this matter, except
20 fees that may be incurred on appeal. Under these legal principles, PIP shall pay the amount of
21 \$62,000 for fees and costs incurred investigating, litigating, and enforcing this matter, including the
22 fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's
23 approval of this Agreement in the public interest.

24 **4.4 Payment Timing; Payments Held In Trust**

25 PIP shall deliver all settlement payment funds required by this Agreement to its counsel
26 within two calendar weeks of the date that this Agreement is fully executed by the Parties.
27 Defendant's counsel shall confirm receipt of settlement funds in writing to plaintiff's counsel and,
28 thereafter, hold the amounts paid in trust until such time as the Court approves this Agreement.

1 Within five business days of the date the Court approves the Agreement, Defendant's
2 counsel shall deliver the payments it has held in trust to plaintiff's counsel as follows:

- 3 1. a civil penalty check in the amount of \$9,000 payable to "OEHHA" (EIN: 68-0284486,
4 Memo line "Prop 65 Penalties, 2015-01098");
- 5 2. a civil penalty check in the amount of \$3,000 payable to "Susan Davia" (Tax ID to
6 be supplied prior to issuance of the payment, Memo line "Prop 65 Penalties, 2015-
7 01098"); and
- 8 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the
9 amount of \$62,000 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line
10 "2015-01098")

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

12 Sheffer Law Firm
13 Attn: Proposition 65 Controller
14 81 Throckmorton Ave., Suite 202
15 Mill Valley, CA 94941

16 PIP shall be liable for payment of interest, at a rate of 10% simple annual interest, for all
17 amounts due and owing from it under this Section that are not received by Sheffer Law Firm within
18 two business days of the due date for such payment.

19 **5. CLAIMS COVERED AND RELEASE**

20 **5.1 Davia's Releases of Settling Defendant**

21 **5.1.1** This Agreement is a full, final, and binding resolution between Davia, on
22 behalf of herself, her past and current agents, representatives, attorneys, successors, and/or
23 assignees, and in the interest of the general public, and PIP and each of its attorneys, successors,
24 licensors, assigns, affiliates and former affiliates ("affiliate" means any person or entity who directly
25 or indirectly owns or controls, is owned or controlled by, or is under common ownership or control
26 with, Defendant), and their current and past directors, officers, employees, and attorneys (all jointly
27 referred to as "Defendant Releasees"), and each entity to whom (or from whom) any of them directly
28 or indirectly distribute, receive for distribution, and/or sell the Covered Products, including but not
limited to Golden State Lumber and any distributors, wholesalers, customers, retailers, franchisees,
cooperative members, licensors, and licensees ("Distributor Releasees"), of any violation of

1 Proposition 65 that has been or could have been asserted against Defendant Releasees or Distributor
2 Releasees regarding the failure to warn about exposure to any Listed Chemical arising in connection
3 with any Covered Product manufactured, sourced, distributed, or sold by Defendant Releasees or
4 Distributor Releasees prior to the Effective Date. Compliance with this Agreement shall constitute
5 compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products after
6 the Effective Date.

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

18 This Section 5.1 release shall not extend upstream to any entities that manufactured any
19 Covered Product or any component parts thereof, or any distributors or suppliers who sold any
20 Covered Products or any component parts thereof to PIP.

21 **5.1.3** Upon court approval of the Agreement, the Parties waive their respective rights to a
22 hearing or trial on the allegations of the Complaint.

23 **5.1.4** General Release

24 It is possible that other Claims not known to Davia that arise out of the facts alleged in the Notices
25 and/or the Complaint will develop or be discovered. Except as otherwise detailed in Section 4.2,
26 Davia, on behalf of herself, her past and current agents, representatives, attorneys, and successors
27 and/or assigns, and *not* in her representative capacity, acknowledges that this Agreement is
28 expressly intended to cover and include all such Claims, including all rights of action therefor. Davia

1 has full knowledge of the contents of Civil Code § 1542. Davia acknowledges that the Claims
2 released in Sections 4.1 and 4.2 include unknown Claims, and Davia nevertheless waives Civil Code
3 § 1542 as to any such unknown Claims. Civil Code § 1542 reads as follows:

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

9 Davia, on behalf of herself, her past and current agents, representatives, attorneys, and
10 successors and/or assignees, and not in her representative capacity, acknowledges and understands
11 the significance and consequences of this specific waiver of Civil Code § 1542.

12 **5.2 Settling Defendant's Release of Davia**

13 **5.2.1** Defendant waives any and all claims against Davia, her attorneys, and other
14 representatives for any and all actions taken or statements made by Davia and her attorneys and
15 other representatives, whether in the course of investigating claims or otherwise seeking enforcement
16 of Proposition 65 against it in this matter, and/or with respect to the Covered Products.

17 **5.2.2** Defendant provides a general release herein which shall be effective as a full and final
18 accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys'
19 fees, damages, losses, claims, liabilities and demands of Defendant of any nature, character or kind,
20 known or unknown, suspected or unsuspected, arising out of the subject matter of the Action.
21 Defendant acknowledges that it is familiar with Section 1542 of the California Civil Code, which
22 provides as follows:

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

28 Defendant 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 the subject matter of

1 the Action. In furtherance of such intention, the release hereby given shall be and remain in effect as
2 a full and complete release notwithstanding the discovery or existence of any such additional or
3 different claims or facts arising out of the subject matter of the Action.

4 **6. SEVERABILITY**

5 If, subsequent to court approval of this Agreement, any of the provisions of this Agreement
6 are determined by a court to be unenforceable, then so long as all parties agree, the validity of the
7 enforceable provisions remaining shall not be adversely affected, unless the Court finds that any
8 unenforceable provision is not severable from the remainder of the Agreement.

9 **7. COURT APPROVAL**

10 This Agreement becomes enforceable upon approval by the Court. Davia shall give notice
11 to PIP and its counsel of the approval of the Agreement by the Court by electronic delivery of a
12 Notice of Entry of Order to the designated address for counsel for PIP set forth in Section 9.
13 Compliance with this notice provision controls the date upon which the payments set forth in Section
14 4 are due. If notice is delayed, then such requirements for payment under Section 4 are extended by
15 the same number of days that the notice is delayed.

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

21 The Agreement shall become null and void if, for any reason, it is not approved and entered
22 by the Court, as it is executed, within one year after it has been fully executed by all Parties. If the
23 Agreement becomes null and void after any payment of monies under this agreement to Defendant's
24 counsel or to Davia or her counsel, such monies shall be returned to Defendant by return of settlement
25 payment checks or payment of such monies to counsel of Defendant in trust for that Defendant.

26 If this Agreement is not entered by the Court, and the Parties have exhausted their meet and
27 confer efforts pursuant to this Section 7, upon 15 days written notice, the law firm holding
28 Defendant's funds in trust shall refund any and all payments made directly or indirectly into its trust

1 account by Defendant, including through its counsel, for purposes of making those payments noted
2 in Section 4..

3 **8. GOVERNING LAW**

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

5 **9. NOTICES**

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

8 For Protective Industrial Products, Inc. to:

9 Joseph A. Milot, Jr., President
10 Protective Industrial Products, Inc.
11 968 Albany Shaker Road
12 Latham, NY 12110

12 With copy to their counsel at:

13 Jeff Parker
14 Sheppard Mullin Richter & Hampton LLP
15 333 South Hope Street, 43rd Floor
16 Los Angeles, CA 90071-1422
17 E-Mail: jparker@sheppardmullin.com

17 For Davia to:

18 Proposition 65 Coordinator
19 Sheffer Law Firm
20 81 Throckmorton Ave., Suite 202
21 Mill Valley, CA 94941
22 E-Mail: sheffesq@aol.com

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

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

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

26 **11. MODIFICATION**

27 This Agreement may be modified only by: (1) written agreement of the Parties; or (2) a
28 successful motion of any Party after written agreement of the Parties and approval of the modified

1 Agreement by the Court.

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

3 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
4 is required to obtain judicial approval of this Agreement. In furtherance of obtaining such approval,
5 Davia and Defendant, and their respective counsel, agree to mutually employ their best efforts to
6 support the entry of this Agreement as a settlement agreement and obtain approval of the Agreement
7 - sufficient to render an order approving this agreement - by the Court in a timely manner. Any effort
8 by Settling Defendant or by Davia to impede judicial approval of this Agreement shall subject such
9 impeding party to liability for attorney fees and costs incurred by Plaintiff or her counsel or by
10 Defendant and its counsel, as the case may be, in their efforts to meet or oppose such impeding
11 conduct.

12 **13. ENTIRE AGREEMENT**

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

23 **14. ATTORNEY'S FEES**

24 **14.1** Should Davia or Defendant prevail on any motion, application for order to show
25 cause, or other proceeding to enforce a violation of this Agreement, the prevailing Party shall be
26 entitled to her/its reasonable attorney fees and costs incurred as a result of such motion, order or
27 application.

1 **14.2** Except as specifically provided in the above paragraph and in Section 4.3, each Party
2 shall bear its own costs and attorney's fees in connection with this action.

3 **14.3** Nothing in this Section 14 shall preclude a Party from seeking an award of sanctions
4 pursuant to law.

5 **15. Neutral Construction**

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


14 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

18 **17. AUTHORIZATION**

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

22 **IT IS SO AGREED**

Dated: _____, 2017 _____ Plaintiff Susan Davia	Dated: <u>April 28</u> , 2017  _____ Joseph A. Milot, Jr., President Protective Industrial Products, Inc.
--	---

1 **14.2** Except as specifically provided in the above paragraph and in Section 4.3, each Party
2 shall bear its own costs and attorney's fees in connection with this action.

3 **14.3** Nothing in this Section 14 shall preclude a Party from seeking an award of sanctions
4 pursuant to law.

5 **15. Neutral Construction**

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


14 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

18 **17. AUTHORIZATION**

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

22 **IT IS SO AGREED**

<p>23 Dated: <u>4.28.2017</u>, 2017</p> <p>24 </p> <p>25 Plaintiff Susan Davia</p>	<p>26 Dated: _____, 2017</p> <p>27 _____ 28 Joseph A. Milot, Jr., President Protective Industrial Products, Inc.</p>
---	--