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8 SUSAN DAVIA

9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 FOR THE COUNTY OF MARIN
11 UNLIMITED CIVIL JURISDICTION

12 SUSAN DAVIA,

13 Plaintiff,

14 vs.

15 ULINE INC., TINGELY RUBBER
16 CORPORATION, and DOES 1-150,

17 Defendants.

Case No. CIV 1504315

**CONSENT TO JUDGMENT AS TO
DEFENDANT TINGELY RUBBER
CORPORATION AND ULINE INC.
(SUED AS ULINE CORPORATION)**

Case Filed: November 30, 2015

Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent to Judgment Settlement Agreement (“Agreement”) is entered into by and
4 between Plaintiff Susan Davia, (“Davia” or “Plaintiff”) and Defendants Tingley Rubber Corporation
5 (“Tingley”) and Uline, Inc. (“ULINE”) with Tingley and ULINE referred to as “Settling Defendants”
6 and Davia, Tingley and ULINE collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendants**

12 ULINE employs 10 or more persons and is a person in the course of doing business under
13 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6
14 *et seq.* (“Proposition 65”). Tingley is a small, family-owned New Jersey Company doing business in
15 California through the sale of industrial and commercial clothing and footwear products. Tingley
16 does not admit, and reserves the right to deny in any context other than this action, that it is a person
17 in the course of doing business under Proposition 65. However, for the limited and exclusive purpose
18 of this Consent Judgment, for the limited and exclusive purpose of resolving Davia’s claims against
19 Tingley and ULINE, and to avoid expenditures of resources litigating this issue, Tingley is not
20 asserting this denial.

21 **1.4 General Allegations**

22 Davia alleges that Tingley and ULINE manufactured, distributed and/or sold, in the State of
23 California, certain types of PVC rain wear comprised of or made with components that allegedly
24 exposed users to Di(2-ethylhexyl)phthalate (“DEHP”) and Tris(chloroethyl) phosphate (“TCEP”)
25 without first providing “clear and reasonable warning” under Proposition 65. DEHP is listed as a
26 reproductive and developmental toxicant pursuant to Proposition 65. TECP is listed as a carcinogen
27 pursuant to Proposition 65. Where appropriate, both DEHP and TECP shall hereafter, collectively,
28 be referred to as “Listed Chemical.”

1 Tingley denies the general allegations made by Davia and asserts that Tingley takes
2 compliance with all laws very seriously. In that regard, Tingley represents it was working on
3 becoming fully compliant with Proposition 65 well before the receipt of any 60-day Notices. As early
4 as April 2014, Tingley represents that it was reviewing its product lists and developing warning tags
5 to put on all Covered Products that were likely to contain listed chemicals being shipped to
6 California. Tingley represents that a system was developed to tag all Covered Products shipped to
7 California. Tingley represents that its compliance efforts also included the placement of warnings on
8 its E-commerce website, which placement was completed on or about November 7, 2014. Along
9 with the tagging of all Covered Products, Tingley represents that a letter was sent on October 27, 2014
10 to distributor customers of Tingley (including ULINE) informing them of the importance of
11 complying with Proposition 65 and the need to label all Covered Products being shipped to
12 California.

13 **1.5** Notices of Violation

14 On September 1, 2015, Davia served ULINE and Tingley with valid and compliant
15 Proposition 65 60-DayNotice of Violation, together with valid, requisite Certificates of Merit that
16 provided public enforcers and these entities with notice of alleged violations of Health & Safety Code
17 § 25249.6 for failing to warn consumers of the presence of the DEHP in and on their PVC rainwear
18 products sold in California. On October 1, 2015, Davia served ULINE and Tingley with valid and
19 compliant Supplemental Proposition 65 60-DayNotice of Violation, together with valid, requisite
20 Certificates of Merit that provided public enforcers and these entities with notice of alleged violations
21 of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of the TCEP in and
22 on their PVC rainwear products sold in California. On October 29, 2015, Davia served ULINE and
23 Tingley with valid and compliant Amended Supplemental Proposition 65 60-DayNotice of Violation,
24 together with valid, requisite Certificates of Merit that provided public enforcers and these entities
25 with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of
26 the presence of the TCEP in and on their PVC rainwear products sold in California.

27 ULINE and Tingley received the September 1, 2015, October 1, 2015, and October 29, 2015,
28 notices of violation (hereafter, collectively, "Notices"). The Parties represent that, as of the date this

1 Agreement is executed, they believe that no public enforcer is diligently prosecuting a Proposition
2 65 enforcement action related to the Listed Chemical in the covered products, as identified in the
3 Notices.

4 **1.6** Complaints

5 On November 30, 2015, Davia, acting in the interest of the general public in California, filed a
6 Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV
7 1504315, alleging violations against Tingley, ULINE and Does 1-150 of Health & Safety Code § 25249.6
8 based, *inter alia*, on the alleged exposures to DEHP contained in certain PVC rainwear products. On
9 January 13, 2016, Davia, also acting in the interest of the general public in California, filed a First
10 Amended Complaint in the Superior Court of the State of California for the County of Marin, Case
11 No. CIV 1504315, alleging violations Tingley, ULINE and Does 1-150 of Health & Safety Code §
12 25249.6 based, *inter alia*, on the alleged exposures to DEHP and TCEP contained in certain PVC
13 rainwear products.

14 **1.7** No Admission

15 This Agreement resolves claims that are denied and disputed by each Settling Defendant. The
16 Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between
17 the Parties for the purpose of avoiding prolonged litigation. Each Settling Defendant denies the
18 material factual and legal allegations contained in the Notices and Complaints, maintains that it did
19 not knowingly or intentionally expose California consumers to the Listed Chemical through the
20 reasonably foreseeable use of the Covered Product and otherwise contends that all Noticed products
21 it has manufactured, distributed and/or sold in California have been and are in compliance with all
22 applicable laws. Nothing in this Agreement shall be construed as an admission by any Settling
23 Defendant of any fact, finding, issue of law, or violation of law; nor shall compliance with this
24 Agreement constitute or be construed as an admission by any Settling Defendant of any fact, finding,
25 conclusion, issue of law, or violation of law, such being specifically denied by each Settling
26 Defendant. However, notwithstanding the foregoing, this section shall not diminish or otherwise
27 affect each Settling Defendant's obligations, responsibilities, and duties under this Agreement.

1 **1.8** Consent to Jurisdiction

2 For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction over
3 Tingley and ULINE as to only the allegations contained in Complaints, that venue is proper in County
4 of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Agreement.
5 As an express part of this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was
6 filed shall retain jurisdiction over the parties to enforce the settlement until performance in full of the
7 terms of the settlement.

8 **2.** DEFINITIONS

9 **2.1** The term “Complaint” shall mean the January 13, 2016, First Amended Complaint.

10 **2.2** The term “Covered Product 1” means any DuraScrim brand PVC rainwear product,
11 excluding Covered Product 2, including, but not limited to, DuraScrim Hood (including Tingley
12 H56107, ULINE S18131), DuraScrim Jackets (including Tingley J56107 and J56207, ULINE S-18127),
13 Durascrim Overalls (including Tingley O56007 and O56107, ULINE S-18128), Durascrim Pants
14 (including Tingley P56007, ULINE S-18129), Durascrim Coats (including Tingley C56207, ULINE S-
15 18131) and Durascrim 3 Pc. Suits (including Tingley S56307).

16 **2.3** The term “Covered Product 2” means any Tingley rainwear, excluding Covered
17 Product 1, that including, but not limited to, American, Industrial Work, Safety Flex, WebDri,
18 Comfort Tuff and Tingley Poncho product lines of PVC rain hoods, hats, jacket, coats, pants, overalls
19 and 3 pc. suits.

20 **2.4** The term “Covered Products” shall mean Covered Product 1 and Covered Product
21 2, collectively.

22 **2.5** The term “Effective Date” shall mean August 15, 2016.

23 **2.6** The term “Phthalate Free” shall mean less than or equal to 1,000 parts per million
24 (“ppm”) of each DEHP, DBP, DINP, DIDP and DnHP in any component of any Covered Product 1
25 or Covered Product 2, determined by a minimum of duplicate quality controlled tests by an
26 accredited U.S. laboratory using U.S. Environmental Protection Agency (“EPA”) testing
27 methodologies 3580A and 8270C or any other methodology utilized by federal or state agencies for
28 the purpose of determining the phthalate content in a solid substance. The term “TCEP Free” shall

1 mean less than or equal to 25 parts ppm of any TCEP in any material, component of any Covered
2 Product 2, determined by a minimum of duplicate quality controlled tests by an accredited U.S.
3 laboratory using EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized
4 by federal or state agencies to determine the presence, and measure the quantity, of TCEP in a solid
5 substance.

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

8 **3. NON-MONETARY RELIEF**

9 **3.1 Formulation Commitment**

10 **3.1.1** As of the Effective Date, Tingley shall only manufacture, import, distribute, sell
11 and/or offer for sale in California Covered Products that are “Phthalate Free” and “TCEP Free”
12 pursuant to Section 2.6 above or include the required Proposition 65 consumer health hazard
13 warnings pursuant to Section 3.4 below.

14 **3.1.2** Tingley represents as a material part of this settlement agreement that it has
15 thoroughly, and in good faith, investigated chemical reformulation of the Covered Products to reduce
16 or eliminate Proposition 65 listed phthalate plasticizers and chlorinated phosphate fire retardants in
17 the Covered Products. After this investigation, Tingley has concluded that no substitute chemicals
18 for the listed Proposition 65 constituents of Covered Products are available that would allow Tingley
19 to manufacture the Covered Products to its current standards for durability, safety and performance.
20 As such, reformulation is not a viable option at the present time and for the foreseeable future.
21 Instead, Tingley shall continue to maintain a comprehensive customer notification and warning
22 scheme for the Covered Products currently in place as required by this Agreement. Tingley agrees
23 that, while it is in no way bound by this Agreement to achieve Covered Product reformulation in the
24 future if reasonable substitute chemicals are not available, it will continue to evaluate alternative
25 formulation of its rainwear products, in good faith, to identify and incorporate reasonable substitute
26 chemicals for the Proposition 65 Listed Chemicals currently utilized in the Covered Products.

27 ///

1 **3.2** Previously Obtained or Distributed Covered Products.

2 **3.2.1** Customer Notification - No later than the Effective Date, Tingley shall send a letter,
3 electronic or otherwise (“Notification Letter”) to: (1) each California customer to which it, after
4 January 1, 2015, supplied any Covered Product 1; (2) each U.S. customer that Tingley reasonably
5 understands maintains any retail outlet in California and (3) any other California customer and/or
6 retailer that Tingley reasonably understands or believes has any inventory of Covered Product 1. The
7 Notification Letter shall advise the recipient that Covered Product 1 contains DEHP and TCEP,
8 chemicals known to the State of California to cause cancer (TCEP) and birth defects or other
9 reproductive harm (DEHP). The Notification letter shall direct recipient that all Covered Product 1
10 must be labeled with a clear and reasonable Proposition 65 warning before it is sold in the California
11 market. The Notification Letter shall include a sheet of white background, adhesive Proposition 65
12 Warning stickers with the following warning in no less than Book Antiqua, point 8 font (or its
13 equivalent):

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

17 The Notification Letter shall require written confirmation from the recipient, within 15 days of
18 mailing, as to the number of Covered Product 1 and Covered Product 2 in their inventory and
19 confirmation that all such inventory has been labelled with the warning language identified in this
20 section.

21 **3.2.2** Tingley shall maintain records of compliance correspondence, inventory reports or
22 other communication confirming compliance with § 3.2.1 for three (3) years from the Effective Date
23 and shall produce copies of such records upon written request by Davia.

24 **3.3** Products No Longer in Tingley’s Control

25 Tingley certifies that on or about October 27, 2014, Tingley sent a letter, (“Original Notification
26 Letter”) to its large distribution customers and California retailers to which it supplied Covered
27 Products at any time. The Notification Letter advised the recipient that Covered Products required
28 a Proposition 65 Warning when shipped to California. The Notification Letter instructed them to

1 contact Tingley to obtain a Proposition 65 warning.

2 If Tingley discovers, within one year of the Effective Date, the identity of (1) any California
3 retail customer to whom it supplied Covered Products at any time since October 27, 2014, (2) any of
4 its vendors and retail customers located outside of California that is reasonably believes distributes
5 and sells Covered Products into California or (3) any online vendors and retail customers selling
6 Covered Products into California, that did not receive the above-referenced Notification Letter, then
7 Tingley shall, within fifteen (15) days of such discovery, contact such customer or vendor and provide
8 the above referenced Notification Letter.

9 **3.4 Tingley Warning Obligations**

10 Tingley certifies that it has already commenced a warning program whereby all Covered
11 Products are labeled with a Proposition 65 warning. As of the Effective Date, Tingley shall not sell
12 or ship any Covered Product to a California vendor or retailer, or sell or ship any Covered Product
13 to a vendor or retailer that Tingley reasonably understands maintains retail outlets in California,
14 unless such Covered Products are sold or shipped with one of the clear and reasonable warnings set
15 forth hereafter.

16 The Parties acknowledge that Proposition 65 jurisdiction is limited to products shipped to
17 California. Notwithstanding that jurisdictional limitation, Tingley has instituted and intends to
18 maintain labeling of all Covered Products shipped to locations within the United States.

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

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

25 (i) **Product Labeling.** For all Covered Products sold at to any entity that Tingley
26 reasonably understands maintains retail outlets in California, Tingley shall affix a warning to the
27 labeling or directly on the Covered Product that states:
28

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

5 (b) **Mail Order Catalog and Internet Sales.** Tingley represents that it does not currently
6 sell any products, including Covered Products, through Mail Order catalogs. However, in such case
7 as Tingley sells any Covered Products via mail order catalog or the Internet to customers located in
8 the United States any such catalog or Internet site offering any Covered Products for sale, Tingley
9 shall include a warning in the catalog or within the website, identifying the specific Covered Products
10 to which the warning applies, as specified in Sections 3.2(b)(i) and (ii) below.

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

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

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

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

29 The designated symbol must appear on the same page and in close proximity to the display and/or
30 description of the Covered Products. On each page where the designated symbol appears, Tingley
31 must provide a header or footer directing the consumer to the warning language and definition of

1 the designated symbol.

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

4 (ii) **Internet Website Warning.** A warning must be given in conjunction with the
5 sale of any Covered Products by Tingley via the Internet, provided it appears either: (a) on the same
6 web page on which a Covered Product is displayed; (b) on the same web page as the order form for
7 a Covered Product; (c) on the same page as the price for any Covered Product; (d) on one or more
8 web pages displayed to a purchaser during the checkout process; or (e) by a clearly marked hyperlink
9 on the Product display page indicating "Proposition 65 Warning". The following warning statement
10 shall be used and shall appear in any of the above instances adjacent to or immediately following the
11 display, description, or price of the Covered Product for which it is given in the same type size or
12 larger than the Covered Product description text:

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

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

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

22 **3.5 ULINE Warning Obligations**

23 No later than the Effective Date, ULINE shall send a memorandum to all distribution
24 managers of all ULINE warehouses located in California or serving customers in California, requiring
25 them to check their stock and inventory of Covered Products and pull any such Covered Product that
26 does not have the Proposition 65 warning printed on its label or packaging. Within one week of the
27 Effective Date, each such ULINE manager shall provide a written confirmation of completion of this
28 task and identification of the number of each Covered Product pulled for lack of warning.

1 As of the Effective Date, ULINE shall not sell or ship any Covered Product in California or to
2 a California address, unless such Covered Products are documented to be Phthalate Free and TCEP
3 Free pursuant to Section 2.6 or sold or shipped with one of the clear and reasonable warnings set
4 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 The warning obligations of this Section 3.5 do not apply to defendant Tingley.

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

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

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

19 (b) **Internet Sales.** As of November 1, 2016, for all Covered Products sold by ULINE via
20 the Internet to customers located in California, or to customers who request a Covered Product be
21 shipped to an address in California, any such Internet site offering any Covered Product for sale shall
22 include a warning within the website, identifying the specific Covered Product to which the warning
23 applies, as specified below.

24 A warning must be given in conjunction with the sale of any Covered Products by ULINE
25 via the Internet, provided it appears either: (a) on the same web page on which a Covered Product is
26 displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page
27 as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser
28 during the checkout process. The following warning statement shall be used and shall appear in any

1 of the above instances adjacent to or immediately following the display, description, or price of the
2 Covered Product for which it is given in the same type size or larger than the Covered Product
3 description text:

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

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

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

15 (c) **Mail Order Catalog Warning.** ULINE represents as a material part of this Agreement
16 that it currently does not receive a material amount of California purchases of Covered Product
17 directly through its printed catalog and that most customers reviewing the printed catalog typically
18 purchase their products through the ULINE website or some other method. ULINE shall have no
19 obligation under this Agreement to include any Proposition 65 warning for the Covered Products in
20 any printed mail order catalog.

21 **4. MONETARY PAYMENTS**

22 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

23 As a condition of settlement of all the claims referred to in this Consent to Judgment, Tingley
24 Rubber Corporation shall pay a total of \$10,000 in civil penalties in accordance with California Health
25 & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of
26 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
27 remitted to Davia.

28 **4.2 Augmentation of Penalty Payments**

 For purposes of the penalty assessment under this Agreement, plaintiff is relying entirely
upon Tingley and ULINE and their counsel for accurate, good faith reporting to plaintiff of the nature

1 and amounts of relevant sales activity. If within nine (9) months of the Effective Date, plaintiff
2 discovers and presents to Tingley or ULINE (“Notified Party”) as the case may be, evidence that the
3 sales data for the Durascrim products with product codes H56107, S18131, J56207 and S-18127 is
4 materially different than those identified by such Notified Party prior to execution of this Agreement,
5 then such misrepresenting Notified Party shall be liable for an additional penalty amount of \$150 per
6 quantity of Responsible Covered Product sold prior to execution of this Agreement but not identified
7 by such Notified Party to plaintiff. The Notified Party shall also be liable for any reasonable,
8 additional attorney fees expended by plaintiff in discovering applicable additional retailers or sales
9 for Notified Party, up to a maximum of \$10,000 absent further Court review and approval. Plaintiff
10 agrees to provide such misrepresenting Notified Party with a written demand for all such additional
11 penalties and attorney fees under this Section. After service of such demand, Notified Party shall
12 have thirty (30) days to dispute plaintiff’s assertion or to agree to the amount of fees and penalties
13 owing and submit such payment to plaintiff in accordance with the method of payment of penalties
14 and fees identified in Sections 4.4 and 4.5. Should this thirty (30) day period pass without any such
15 resolution between the parties and payment of such additional penalties and fees, plaintiff shall be
16 entitled to file a formal legal claim for additional civil penalties pursuant to this section and shall be
17 entitled to all reasonable attorney fees and costs relating to such claim.

18 **4.3 Reimbursement of Plaintiff’s Fees and Costs**

19 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
20 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
21 issue to be resolved after the material terms of the agreement had been settled. Tingley and ULINE
22 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
23 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
24 Davia and her counsel under general contract principles and the private attorney general doctrine
25 codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter,
26 except fees that may be incurred on appeal. Under these legal principles, Tingley Rubber
27 Corporation shall pay the amount of \$48,000 for fees and costs incurred investigating, litigating and
28 enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating,

1 drafting, and obtaining the Court's approval of this Agreement in the public interest.

2 **4.4 Payment Timing; Payments Held In Trust**

3 Tingley shall deliver all settlement payment funds required by this Consent Judgment to its
4 counsel within one week of the date that this Agreement is fully executed by the Parties. Tingley's
5 counsel shall confirm receipt of settlement funds in writing to plaintiff's counsel and, thereafter, hold
6 the amounts paid in trust until such time as the Court approves this settlement contemplated by
7 Section 7.

8 Within five business days of the date the Court approves the settlement, Tingley's counsel
9 shall deliver the settlement payments it has held in trust to plaintiff's counsel as follows:

- 10 1. a civil penalty check in the amount of \$7,500 payable to "OEHHA" (EIN: 68-0284486, Memo
11 line "Prop 65 Penalties, 2015-01135");
- 12 2. a civil penalty check in the amount of \$2,500 payable to "Susan Davia" (EIN: to be
13 supplied, Memo line "Prop 65 Penalties, 2015-01135"); and
- 14 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the amount of
15 \$48,000 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2015-01135")

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

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

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

23 **5. CLAIMS COVERED AND RELEASE**

24 **5.1 Davia's Releases of Settling Defendant**

25 **5.1.1** This Agreement is a full, final, and binding resolution between Davia, on behalf of
26 herself, her past and current agents, representatives, attorneys, heirs, successors, and/or assignees,
27 and in the interest of the general public, and Tingley and ULINE and each of their parents,
28 subsidiaries, affiliated entities and common ownership, directors, officers, agents, employees,

1 attorneys, and each entity to whom Tingley and ULINE directly or indirectly distributes or sells the
2 Covered Product 1 and 2, including but not limited to, downstream distributors, wholesalers,
3 customers, retailers, franchisees, cooperative members, and licensees (“Defendant Releasees”) of any
4 violation of Proposition 65 that has been or could have been asserted against Defendant Releasees
5 regarding the failure to warn about exposure to any Listed Chemical arising in connection with any
6 Covered Products manufactured, sourced, distributed, or sold by Defendant Releasees prior to the
7 Effective Date. Tingley and ULINE’s compliance with this Agreement shall constitute compliance
8 with Proposition 65 with respect to the Listed Chemical in the Covered Products after the Effective
9 Date.

10 **5.1.2** Davia, on behalf of herself, her past and current agents, representatives, attorneys,
11 heirs, successors, and/or assignees, and in the public interest, hereby waives with respect to Covered
12 Products all rights to institute or participate in, directly or indirectly, any form of legal action and
13 releases all claims, including, without limitation, all actions, and causes of action, in law or in equity,
14 suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including,
15 but not limited to, investigation fees, expert fees, and attorneys’ fees) of any nature whatsoever,
16 whether known or unknown, fixed or contingent (collectively “claims”), against Defendant Releasees
17 that arise under Proposition 65 or any other statutory or common law claims that were or could have
18 been asserted in the public interest, as such claims relate to Defendant Releasees’ alleged failure to
19 warn about exposures to either Listed Chemical contained in any Covered Products as such claims
20 are identified in plaintiff’s Notices to defendant in Section 1.5.

21 **5.1.3** This Section 5.1 release is expressly limited to any alleged violations that occur prior
22 to six (6) months after the Effective Date and does not release any person, party or entity from any
23 liability for any violation of Proposition 65 regarding any Covered Products that occurs more than
24 six (6) months after the Effective Date.

25 **5.1.4** The Parties further understand and agree that this Section 5.1 release shall not extend
26 upstream to any entities that manufactured any Covered Product or any component parts thereof, or
27 any distributors or suppliers who sold any Covered Products or any component parts thereof to
28

1 Defendants. Upon court approval of the Agreement, the Parties waive their respective rights to a
2 hearing or trial on the allegations of the Complaint.

3 **5.2** Settling Defendant's Release of Davia

4 **5.2.1** Settling Defendants waives any and all claims against Davia, her attorneys, and other
5 representatives for any and all actions taken or statements made (or those that could have been taken
6 or made) by Davia and her attorneys and other representatives, whether in the course of investigating
7 claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with
8 respect to the Covered Products.

9 **5.2.2** Each Settling Defendant also provides a general release herein which shall be
10 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations,
11 costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any Settling
12 Defendant of any nature, character or kind, known or unknown, suspected or unsuspected, arising
13 out of the subject matter of the Action. Each Settling Defendant acknowledges that it is familiar with
14 Section 1542 of the California Civil Code, which provides as follows:

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

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

25 **6. SEVERABILITY**

26 If, subsequent to court approval of this Agreement, any of the provisions of this Agreement
27 are determined by a court to be unenforceable, the validity of the enforceable provisions remaining
28 shall not be adversely affected, unless the Court finds that any unenforceable provision is not

1 severable from the remainder of the Agreement.

2 7. COURT APPROVAL

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

8 The Agreement shall become null and void if, for any reason, it is not approved and entered
9 by the Court, as it is executed, within one year after it has been fully executed by all Parties. If the
10 Agreement becomes null and void after any payment of monies under this agreement to The Sheffer
11 Law Firm in trust, such monies shall be returned to defendant by payment of such monies to counsel
12 of each defendant in trust for that defendant.

13 If this Agreement is not entered by the Court, and the Parties have exhausted their meet and
14 confer efforts pursuant to this Section 7, upon 15 days written notice, the law firm holding the
15 settlement funds in trust shall refund any and all payments made into its trust account by Settling
16 Defendants as requested.

17 8. GOVERNING LAW

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

19 9. NOTICES

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

22 For Tingley Rubber Corporation to:

23 Dr. Michael Zedalis
24 Tingley Rubber Corporation
25 1551 So. Washington Street, Suite 403
Piscataway, NJ 08854

26 With copy to their counsel at:

27 Anthony J. Reitano, Esq.
28 Herold Law

1 25 Independence Boulevard
Warren, NJ 07059

2 R. Morgan Gilhuly
3 Barg Coffin Lewis & Trapp, LLP
4 350 California Street, 22nd Floor
San Francisco, CA 94104-1435

5 For Uline, Inc. to:

6 Director of Legal Affairs
7 Uline, Inc.
8 12575 Uline Drive
Pleasant Prairie, WI 53158

9 With copy to their counsel at:

10 Megan O. Curran
11 Foley & Lardner LLP
12 555 California Street | Suite 1700
San Francisco, CA 94104-1520

13 For Davia to:

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

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

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

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

22 **11. MODIFICATION**

23 This Agreement may be modified only: (1) by written agreement of the Parties; or (2) upon a
24 successful motion of any party and approval of a modified Agreement by the Court. In the event
25 that California law changes or DEHP or TCEP is de-listed by or thorough OEHHA as a chemical
26 known to the State of California cancer, birth defects or other reproductive harm, and such change
27 or de-listing is considered by any Settling Defendant to eliminate or otherwise modify any of their
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1 obligations created by this Agreement, such Settling Defendant shall be entitled to seek a
2 modification or termination of its obligations under this Agreement. To seek such modification or
3 termination of its obligations pursuant to this Section, Settling Defendant must first provide notice
4 to plaintiff of such intention, which notice shall identify the exact modification or termination it is
5 seeking and provide the legal and factual basis supporting any such modification or termination.
6 The Parties must thereafter, for a period of no less than thirty (30) days, meet and confer in good faith
7 in an attempt to reach a written agreement on such modification or termination. Only after the failure
8 of such meet and confer efforts shall Settling Defendant be entitled to, upon proper legal notice to
9 plaintiff, her counsel and the Office of the Attorney General of the State of California, bring a motion
10 in the Marin County Superior Court for an order modifying or eliminating such Settling Defendant's
11 obligations under this Agreement.

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

13 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
14 is required to obtain judicial approval of this Agreement. In furtherance of obtaining such approval,
15 Davia and each Settling Defendant, and their respective counsel, agree to mutually employ their best
16 efforts to support the entry of this Agreement as a settlement agreement and obtain approval of the
17 Agreement - sufficient to render an order approving this agreement - by the Court in a timely manner.
18 Any effort by Tingley or ULINE to impede judicial approval of this Agreement shall subject such
19 impeding party to liability for attorney fees and costs incurred by plaintiff or her counsel in their
20 efforts to meet or oppose such party's impeding conduct.

21 **13. ENTIRE AGREEMENT**

22 This Settlement contains the sole and entire agreement and understanding of the Parties with
23 respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
24 commitments, and understandings related hereto. No representations, oral or otherwise, express or
25 implied, other than those contained herein have been made by any Party hereto. No other
26 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
27 any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall
28 be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions

1 of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether
2 or not similar, nor shall such waiver constitute a continuing waiver

3 **14. ATTORNEY'S FEES**

4 **14.1** Should Davia prevail on any motion, application for order to show cause or other
5 proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable attorney
6 fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. §1021.5.

7 Should Tingley or ULINE prevail on any motion, application for order to show cause or other
8 proceeding to enforce a violation of this Consent Judgment, such party shall be entitled to its
9 reasonable attorney fees and costs incurred as a result of such motion, order or application.

10 **14.2** Except as specifically provided in the above paragraph and in Section 4.3, each Party
11 shall bear its own costs and attorney's fees in connection with this action.

12 **14.3** Nothing in this Section 14 shall preclude a Party from seeking an award of sanctions
13 pursuant to law.

14 **15. NEUTRAL CONSTRUCTION**

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

23 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

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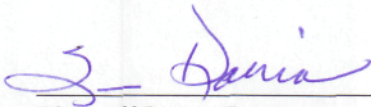
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17. AUTHORIZATION

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: October <u>3</u> , 2016  _____ Plaintiff Susan Davia | Dated: October __, 2016 _____ Dr. Michael Zedalis Tingley Rubber Corporation |
| Dated: October __, 2016 _____ Phillip D. Hunt, Executive Vice President Uline, Inc. | |

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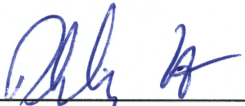
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|---|--|
| Dated: October __, 2016 _____ Plaintiff Susan Davia | Dated: October <u>3</u> , 2016  _____ Dr. Michael Zedalis Tingley Rubber Corporation |
| Dated: October __, 2016 _____ Phillip D. Hunt, Executive Vice President Uline, Inc. | |

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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

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|--|---|
| Dated: October __, 2016 _____ Plaintiff Susan Davia | Dated: October __, 2016 _____ Dr. Michael Zedalis Tingley Rubber Corporation |
| Dated: October <u>10</u> , 2016  _____ Phillip D. Hunt, Executive Vice President Uline, Inc. | |