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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 v.

15 CLAIRDECO INTERNATIONAL LIMITED,  
16 LOWE'S COMPANIES, INC., LG  
17 SOURCING, INC. and DOES 1-150,

18 Defendants.

Case No. CIV 1600430

**CONSENT TO JUDGMENT AS TO  
DEFENDANT CLAIRDECO  
INTERNATIONAL LIMITED**

Action Filed: February 3, 2016  
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 Defendant Clairdeco International  
5 Limited (“Clairdeco”). Clairdeco shall hereafter be referred to as “Settling Defendant.” Davia and  
6 Clairdeco are each referred to as a “party” and 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**     Settling Defendant

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

15              **1.4**     General Allegations

16              Davia alleges that Clairdeco, Lowe’s Companies, Inc., Lowe’s Home Centers, LLC and LG  
17 Sourcing, Inc. manufactured, distributed and/or sold, in the State of California, certain types of  
18 vinyl-coated household utility hooks made with components that exposed users to Di(2-  
19 ethylhexyl)phthalate (“DEHP”) and Diisononyl phthalate (“DINP”) without first providing “clear  
20 and reasonable warning” under Proposition 65. Where appropriate, LG Sourcing, Inc., Lowe’s  
21 Home Centers, LLC and Lowe’s Companies, Inc. shall hereinafter be collectively referred to as  
22 “Lowe’s.”

23              DEHP is listed as a carcinogen and a reproductive and developmental toxicant pursuant to  
24 Proposition 65. DINP is listed as a carcinogen pursuant to Proposition 65. DEHP and DINP shall  
25 hereafter be collectively referred to as “Listed Chemical.”

26              **1.5**     Notices of Violation

              On November 23, 2015, Davia served LG Sourcing, Inc. and Lowe’s Companies, Inc. with a  
valid and compliant Proposition 65 60-day Notice of Violation, together with a valid, requisite

1 Certificate of Merit, that provided public enforcers and these entities with notice of alleged  
2 violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of  
3 DEHP and DINP in and on certain vinyl-coated household utility hooks sold in California Lowe’s  
4 retail outlets (AG Notice 2015-01195).

5 On August 25, 2016, Davia served Clairdeco International Limited, Lowe’s Companies, Inc.  
6 and LG Sourcing, Inc. with a valid and compliant Proposition 65 Supplemental 60-day Notice of  
7 Violation, together with a valid, requisite Certificate of Merit, that provided public enforcers and  
8 these entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
9 consumers of the presence of DEHP and DINP in and on certain vinyl-coated household utility  
10 hooks sold in California Lowe’s retail outlets (AG Notice 2016-00929). On January 12, 2017, Davia  
11 re-served Clairdeco, through authorized defense counsel, with the same August 25, 2016,  
12 Supplemental Notice of Violation. Clairdeco and LG Sourcing, Inc. received the Supplemental  
13 Notice of Violation.

14 On December 19, 2016, Davia served Lowe’s Home Centers, LLC with a valid and  
15 compliant Proposition 65 Second Supplemental 60-day Notice of Violation, together with a valid,  
16 requisite Certificate of Merit, that provided public enforcers and these entities with notice of  
17 alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence  
18 of DEHP and DINP in and on certain vinyl-coated household utility hooks sold in California  
19 Lowe’s retail outlets (AG Notice 2016-01533). Lowe’s Home Centers, LLC received the Second  
20 Supplemental Notice of Violation.

21 On February 28, 2017, Davia served Clairdeco, Lowe’s Home Centers, LLC, Lowe’s  
22 Companies, Inc. and LG Sourcing, Inc. with a valid and compliant Proposition 65 Amended  
23 Supplemental 60-day Notice of Violation, together with a valid, requisite Certificate of Merit, that  
24 provided public enforcers and these entities with notice of alleged violations of Health & Safety  
25 Code § 25249.6 for failing to warn consumers of the presence of DEHP and DINP in and on certain  
26 vinyl-coated household utility hooks sold in California Lowe’s retail outlets and that identified the  
correct health endpoint pursuant to which DINP was placed on the Proposition 65 list. (AG Notice  
2017-00263).

1           Settling Defendant represents that, as of the date each executes this Agreement, it believes  
2 that no public enforcer is diligently prosecuting a Proposition 65 enforcement action related to the  
3 Listed Chemical in the Covered Products, as identified in the Notices described above.

4           **1.6**       Complaint and First Amended Complaint

5           On February 3, 2016, 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 1600430, alleging violations by LG Sourcing Inc. and Does 1-150 of Health & Safety Code § 25249.6  
8 based, *inter alia*, on the alleged exposures to DEHP and DINP contained in certain vinyl-coated  
9 household utility hook products.

10           As part of, and upon execution of, this Agreement, the Parties stipulate and agree that the  
11 Complaint shall and will be amended to include the Parties, recitals, and allegations against  
12 Clairdeco of Davia’s claims relating to the Listed Chemical in the vinyl-coated household utility  
13 hook products identified in the Notices.

14           The Parties agree that this stipulated First Amended Complaint (“FAC”) shall be presented  
15 for approval to the Court as part of and in conjunction with the motion to approve this Agreement.  
16 Settling Defendant stipulates and agrees to waive service of the FAC except as part of the  
17 anticipated motion to approve this settlement and approve the FAC. Settling Defendant further  
18 stipulates to waive any response to such FAC and stipulates that the FAC shall be deemed at issue  
19 as to such Settling Defendant upon approval of the Agreement.

20           **1.7**       No Admission

21           This Agreement resolves claims that are denied and disputed by Settling Defendant. The  
22 Parties enter into this Agreement pursuant to a full and final settlement of any and all claims  
23 between the Parties for the purpose of avoiding prolonged litigation. Settling Defendant denies the  
24 material factual and legal allegations contained in the Notice and Action, maintains that it did not  
25 knowingly or intentionally expose California consumers to the Listed Chemical through the  
26 reasonably foreseeable use of the Covered Product and otherwise contends that all Noticed  
products it has manufactured, distributed and/or sold in California have been and are in  
compliance with all applicable laws. Nothing in this Agreement shall be construed as an

1 admission by Settling Defendant of any fact, finding, issue of law, or violation of law; nor shall  
2 compliance with this Agreement constitute or be construed as an admission by Settling Defendant  
3 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by  
4 Settling Defendant. However, notwithstanding the foregoing, this section shall not diminish or  
5 otherwise affect all Settling Defendant's obligations, responsibilities, and duties under this  
6 Agreement.

7 **1.8** Consent to Jurisdiction

8 For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction  
9 over Clairdeco as to the allegations contained in the Complaint, that venue is proper in County of  
10 Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Agreement.  
11 As an express part of this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was  
12 filed shall retain jurisdiction over the parties to enforce the settlement until performance in full of  
13 the terms of the settlement.

14 **2.** DEFINITIONS

15 **2.1** The term "Complaint" shall mean the February 3, 2016, Complaint, Marin County  
16 Superior Court Case No. CIV1600430 and the First Amended Complaint contemplated by this  
17 Agreement.

18 **2.2** The term "Covered Product" means vinyl-coated household utility hooks that  
19 Clairdeco distributes, and/or offers for sale in California, including any Style Selections brand  
20 vinyl-coated household utility hooks that Clairdeco and Lowe's distribute and/or offers for sale  
21 through Lowe's California retail stores to consumers, such as, but not limited to, Style Selection  
22 Broom & Mop Holder (Product No: #0055437).

23 **2.3** The term "Effective Date" shall mean April 1, 2017.

24 **2.4** The term "Phthalate Free" shall mean less than or equal to 1,000 parts per million  
25 ("ppm") of di(2ethyl-hexyl)phthalate ("DEHP"), di-n-butyl phthalate ("DBP"), diisononyl  
26 phthalate ("DINP"), di-isodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP") and butyl  
benzyl phthalate ("BBP"), in any component of any Covered Product, determined by a minimum of  
duplicate quality controlled tests by an accredited U.S. laboratory using Environmental Protection

1 Agency (“EPA”) testing methodologies 3580A and 8270C or Consumer Product Safety Commission  
2 (“CPSC”) Method CPSC-CH-C1001-09.3, as these methodologies may be amended from time to  
3 time.

4 **3. NON-MONETARY RELIEF**

5 **3.1 Formulation Commitment**

6 **3.1.1** No later than March 15, 2017, Clairdeco shall provide the Phthalate Free phthalate  
7 concentration standards of Section 2.4 to its then-current vendors of any Covered Product and  
8 instruct such entities not to incorporate any raw or component materials that do not meet the  
9 Phthalate Free concentration standards of Section 2.4 into any Covered Product. Clairdeco shall  
10 maintain copies of all vendor correspondence relating to the Phthalate Free concentration  
11 standards for two (2) years after the Effective Date and shall produce such copies to Davia within  
12 fifteen (15) days of receipt of reasonable request made in writing from Davia, as long as such  
request is made within two (2) years after the Effective Date.

13 **3.1.2** After the Effective Date, Clairdeco shall provide the Phthalate Free phthalate  
14 concentration standards of Section 2.4 to any New Vendors of any Covered Product and instruct  
15 such entities not to incorporate any raw or component materials that do not meet the Phthalate  
16 Free concentration standards of Section 2.4 into any Covered Product. “New Vendors” means  
17 vendors of Covered Products from whom Clairdeco was not purchasing Covered Products as of  
18 the Effective Date. Prior to purchase and acquisition of any Covered Product from any New  
19 Vendor, Clairdeco shall obtain a written confirmation and accompanying laboratory test result  
20 from the New Vendor demonstrating compliance with the Phthalate Free phthalate concentration  
21 standard in all materials comprising the Covered Product. For two (2) years after the Effective  
22 Date, for every Covered Product Clairdeco manufactures, causes to be manufactured, orders,  
23 causes to be ordered or otherwise obtains from a New Vendor after the Effective Date, Clairdeco  
24 shall maintain copies of all testing of such products demonstrating compliance with this section,  
25 shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration  
standards and shall produce such copies to Davia within fifteen (15) days of receipt of reasonable

1 request made in writing from Davia as long as such request is made within two (2) years after the  
2 Effective Date.

3 **3.1.3** As of the Effective Date, and subject to Clairdeco's right to sell *previously obtained*  
4 inventory pursuant to Sections 3.2 and 3.3, Clairdeco shall not manufacture or cause to be  
5 manufactured for sale, order or cause to be ordered for sale, distribute or cause to be distributed or  
6 otherwise sell, to a California customer or retailer, or to a customer or retailer that Clairdeco has  
7 reason to know maintains retail outlets in the California, any Covered Product that is not Phthalate  
8 Free. For every such Covered Product Clairdeco manufactures, causes to be manufactured, orders,  
9 causes to be ordered or otherwise sells after the Effective Date, Clairdeco shall maintain copies of  
10 all testing of such products demonstrating compliance with this section, shall maintain copies of all  
11 vendor correspondence relating to the Phthalate Free concentration standards of Section 2.2 and  
12 shall produce such copies to Davia within fifteen (15) days of receipt of reasonable request made in  
writing from Davia, as long as such request is made within two (2) years after the Effective Date.

13 **3.2** Previously Obtained or Distributed Covered Products

14 **3.2.1** Clairdeco's Warning Obligations

15 As a material term of this Agreement, Clairdeco represents that, as of approximately March  
16 2016, it began placing warning language compliant with Section 3.2.1(a)(1) on Covered Products.  
17 As of the Effective Date, and until all inventory of Covered Products is Phthalate Free, Clairdeco  
18 shall not sell or ship any Covered Product to a California retailer, or to any customer that Clairdeco  
19 reasonably understands maintains retail outlets in California, unless such Covered Products are  
20 sold or shipped with one of the clear and reasonable warnings set forth hereafter.

21 Each warning shall be prominently placed with such conspicuousness as compared with  
22 other words, statements, designs, or devices as to render it likely to be read and understood by an  
23 ordinary individual under customary conditions *before* purchase or use. Each warning shall be  
24 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.

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

26 (i) **Product Labeling.** For all Covered Products sold at to any entity that

1 Clairdeco reasonably understands maintains retail outlets in California, Clairdeco shall affix a  
2 warning to the labeling or directly on the Covered Product that states:

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

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

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

16                   **WARNING:** This product contains chemicals known  
17                                   to the State of California to cause cancer  
18                                   and birth defects or other reproductive  
19                                   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, Clairdeco may utilize a designated symbol to  
22 cross reference the applicable warning and shall define the term “designated symbol” with the  
23 following language on the inside of the front or back cover of the catalog or on the same page as  
24 any order form for the Covered Product:

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

                  The designated symbol must appear on the same page and in close proximity to the display  
and/or description of the Covered Product. On each page where the designated symbol appears,



1 Clairdeco must provide a header or footer directing the consumer to the warning language and  
2 definition of the designated symbol.

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

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

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

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

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

### 22 **3.3** Elimination of Warning Option

23 After August 15, 2017, Clairdeco shall not distribute or otherwise sell any Covered Product  
24 unless it is Phthalate Free, and shall not sell any Covered Product that is not Phthalate Free, to a  
25 California customer or retailer, or to a customer or retailer that Clairdeco has reason to know  
26 maintains retail outlets in California, regardless of whether a Proposition 65 warning accompanies

1 the product.

2 **4. MONETARY PAYMENTS**

3 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

4 As a condition of settlement of all the claims referred to in this Consent to Judgment,  
5 Clairdeco shall pay a total of \$8,000 in civil penalties in accordance with California Health &  
6 Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of  
7 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty  
8 remitted to Davia.

9 **4.2 Augmentation of Penalty Payments**

10 For purposes of the penalty assessment under this Agreement, plaintiff is relying entirely  
11 upon defendant and its counsel for accurate, good faith reporting to plaintiff of the nature and  
12 amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers  
13 and presents to Clairdeco evidence that the Covered Products have been distributed by Clairdeco  
14 in sales volumes materially different than those identified by Clairdeco prior to execution of this  
15 Agreement, then Clairdeco shall be liable for an additional penalty amount of up to \$10,000.00.  
16 Clairdeco shall also be liable, in accordance with the requirements of Code of Civil Procedure  
17 section 1021.5 for any reasonable, additional attorney fees expended by Davia in discovering such  
18 additional retailers or sales. Davia agrees to provide Clairdeco with a written demand for all such  
19 additional penalties and attorney fees under this Section. After service of such demand, Clairdeco  
20 shall have thirty (30) days to agree to the amount of fees and penalties owing by Clairdeco and  
21 submit such payment to Davia in accordance with the method of payment of penalties and fees  
22 identified in Section 4.1 and 4.4. Should this thirty (30) day period pass without any such  
23 resolution between the Parties and payment of such additional penalties and fees, Davia shall be  
24 entitled to file a formal legal claim for the additional civil penalties and shall be entitled to all  
25 reasonable attorney fees and costs, in accordance with the requirements of Code of Civil Procedure  
26 section 1021.5, relating to such claim.

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

The Parties acknowledge that Davia and her counsel offered to resolve this dispute without

1 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
2 issue to be resolved after the material terms of the agreement had been settled. Clairdeco then  
3 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
4 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due  
5 to Davia and her counsel under general contract principles and the private attorney general  
6 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in  
7 this matter, except fees that may be incurred on appeal. Under these legal principles, Clairdeco  
8 shall pay the amount of \$45,000 for fees and costs incurred investigating, litigating and enforcing  
9 this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting,  
10 and obtaining the Court's approval of this Agreement in the public interest.

11 **4.4 Payment Timing; Payments Held In Trust**

12 Clairdeco shall deliver all settlement payment funds required by this Consent Judgment to  
13 its counsel within one week of the date that this Agreement is fully executed by the Parties.  
14 Settling Defendant's counsel shall confirm receipt of settlement funds in writing to plaintiff's  
15 counsel and, thereafter, hold the amounts paid in trust until such time as the Court approves this  
16 settlement contemplated by Section 7.

17 Within two days of the date the Court approves the settlement, defendant's counsel shall  
18 deliver the settlement payments it has held in trust to plaintiff's counsel as follows:

- 19 1. a civil penalty check in the amount of \$6,000 payable to "OEHHA" (EIN: 68-  
20 0284486, Memo line "Prop 65 Penalties, 2016-00929, 2016-01523");
- 21 2. a civil penalty check in the amount of \$2,000 payable to "Susan Davia" (Tax ID to  
22 be supplied on request, Memo line "Prop 65 Penalties, 2016-00929, 2016-01523");  
23 and
- 24 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the  
25 amount of \$45,000 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line  
26 "2016-00929, 2016-01523")

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

Sheffer Law Firm  
Attn: Proposition 65 Controller

1 81 Throckmorton Ave., Suite 202  
2 Mill Valley, CA 94941

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

6 **5. CLAIMS COVERED AND RELEASE**

7 **5.1 Davia's Releases of Settling Defendant**

8 **5.1.1** This settlement agreement is a full, final and binding resolution between  
9 Davia, acting on her own behalf and in the public interest, and Clairdeco of any violation of  
10 Proposition 65 that was or could have been asserted by Davia on behalf of herself and in the public  
11 interest, her representatives or attorneys, against Clairdeco, its directors, officers, employees and  
12 attorneys ("Releasees"), and each entity to whom Clairdeco directly or indirectly distributes or  
13 sells Covered Products, including, but not limited, to retailers (including, but not limited to Lowe's  
14 Companies, Inc., Lowe's Home Centers and LLC, LG Sourcing, Inc.), downstream distributors,  
15 wholesalers, customers, retailers, marketplace hosts, franchisees, cooperative members, and  
16 licensees ("Downstream Releasees"), based on their alleged failure to warn about alleged  
17 exposures to DEHP and DINP contained in the Covered Products that were manufactured,  
18 distributed, sold and/or offered for sale by Clairdeco in California before the Effective Date.

19 **5.1.2** Clairdeco's compliance with this Settlement Agreement's DEHP and DINP  
20 reformulation and interim warning requirements shall be deemed compliance with Proposition 65  
21 as to those two chemicals in the Covered Products. As to Davia only, Clairdeco's compliance with  
22 the terms of this Settlement Agreement shall be deemed compliance with Proposition 65 as to  
23 exposures to DINP, DIDP, DEHP, DBP, BBP and DnHP in the Covered Products.

24 **5.1.3** In further consideration of the promises and agreements herein contained, Davia on  
25 behalf of herself, her past and current representatives and attorneys, and in the public interest,  
26 hereby waives all Davia's rights to institute or participate in, directly or indirectly, any form of  
legal action and releases all claims against Releasees and Downstream Releasees that Davia may  
have, including, without limitation, all actions, and causes of action, in law or in equity, suits,  
liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including,

1 but not limited to, investigation fees, expert fees, and attorneys' fees -- limited to and arising under  
2 Proposition 65 with respect to DEHP, DIDP, DBP, BBP, DnHP or DINP in the Covered Products  
3 manufactured, distributed, sold and/or offered for sale by Clairdeco before the Effective Date.

4 **5.1.4** Davia also provides a general release herein which shall be effective as a full and  
5 final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses,  
6 attorneys' fees, damages, losses, claims, liabilities and demands of Releasees and Downstream  
7 Releasees of any nature, character or kind, known or unknown, suspected or unsuspected, arising  
8 out of the subject matter of the Action. Davia acknowledges that she is familiar with Section 1542  
9 of the California Civil Code, which provides as follows:

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

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

22 **5.2** Settling Defendant's Release of Davia

23 **5.2.1** Settling Defendant waives any and all claims against Davia, her attorneys, and  
24 other representatives for any and all actions taken or statements made (or those that could have  
25 been taken or made) by Davia and her attorneys and other representatives, whether in the course of  
26 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** Settling Defendant 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 Settling Defendant of

1 any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the  
2 subject matter of the Action. Settling Defendant acknowledges that it is familiar with Section 1542  
3 of the California Civil Code, which provides 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 FAVOR  
6 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM  
7 OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT  
8 WITH THE DEBTOR.

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

16 **6. SEVERABILITY**

17 If, subsequent to court approval of this Agreement, any of the provisions of this Agreement  
18 are determined by a court to be unenforceable, so long as the Parties agree, the validity of the  
19 enforceable provisions remaining shall not be adversely affected, unless the Court finds that any  
20 unenforceable provision is not severable from the remainder of the Agreement.

21 **7. COURT APPROVAL**

22 This Agreement is effective upon execution but must also be approved by the Court. Upon  
23 approval of this Agreement by the Court, Davia shall dismiss the remaining defendants from this  
24 action on the condition such remaining defendants agree to waive all fees and costs in exchange for  
25 such dismissal. Settling Defendant agrees to accept Notice of Entry of any order approving this  
26 Agreement, and any judgment entered upon this Agreement, by electronic mail to counsel for  
Settling Defendant as identified in Section 9.

If this Agreement is not approved by the Court in its entirety, the Parties shall meet and  
confer to determine whether to modify the terms of the Agreement and to resubmit it for approval.  
In meeting and conferring, the Parties agree to undertake any actions reasonably necessary to

1 amend and/or modify this Agreement in order to further the mutual intention of the Parties in  
2 entering into this Agreement.

3 The Agreement shall become null and void if, for any reason, it is not approved and entered  
4 by the Court, as it is executed, within one year after it has been fully executed by all Parties. If the  
5 Agreement becomes null and void after any payment of monies under this agreement, such monies  
6 shall be returned to Settling Defendant by payment of such monies to counsel of each defendant in  
7 trust for that defendant.

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

12 **8. GOVERNING LAW**

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

14 **9. NOTICES**

15 When any Party is entitled to receive any notice under this Agreement, the notice shall be  
16 sent by certified mail (or other tracked delivery) or electronic mail (where applicable) to the  
17 following:

18 For Clairdeco International Limited, to its authorized representative for this settlement:

19 Ms. Li-Hsueh Chiu  
20 8F.-1, No.147, Luoyang St.  
21 Luzhu Dist.  
22 Taoyuan City 338, Taiwan

23 With electronic mail copy to their counsel at:

24 Ann Grimaldi, Esq.  
25 Grimaldi Law Offices  
26 50 California St. #1500  
San Francisco, CA 94111  
[ann.grimaldi@grimaldilawoffices.com](mailto:ann.grimaldi@grimaldilawoffices.com)

For Davia to:

Proposition 65 Coordinator  
Sheffer Law Firm

1 81 Throckmorton Ave., Suite 202  
2 Mill Valley, CA 94941  
3 [Sheffesq@gmail.com](mailto:Sheffesq@gmail.com)

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

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

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

9 **11. MODIFICATION**

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

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  
15 approval, Davia and Settling Defendant, and their respective counsel, agree to mutually employ  
16 their best efforts to support the entry of this Agreement as a settlement agreement and obtain  
17 approval of the Agreement - sufficient to render an order approving this agreement - by the Court  
18 in a timely manner. Any effort by Settling Defendant to impede judicial approval of this  
19 Agreement shall subject such impeding party to liability for attorney fees and costs incurred by  
20 plaintiff or her counsel in their efforts to meet or oppose such Settling Defendant's impeding  
21 conduct. Settling Defendant's neutral position on matters raised by or during the court approval  
22 proceeding shall not be deemed to be impeding behavior under this section.

23 **13. ENTIRE AGREEMENT**

24 This Settlement contains the sole and entire agreement and understanding of the Parties  
25 with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,  
26 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



1 provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other  
2 provisions whether 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  
6 attorney fees and costs incurred as a result of such motion, order or application, consistent with  
7 C.C.P. §1021.5. Should Settling Defendant prevail on any motion, application for order to show  
8 cause or other proceeding to enforce a violation of this Consent Judgment, Settling Defendant may  
9 be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or  
10 application upon a finding that Davia's prosecution of the motion or application lacked substantial  
11 justification. For purposes of this Agreement, the term substantial justification shall carry the same  
12 meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

13 **14.2** Except as specifically provided in the above paragraph and in Section 4.3, each  
14 Party shall bear its own costs and attorney's fees in connection with this action.

15 **14.3** Nothing in this Section 14 shall preclude a Party from seeking an award of  
16 sanctions pursuant to law.

17 **15. Neutral Construction**

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

**16. COUNTERPARTS, FACSIMILE SIGNATURES**

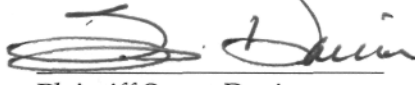
This Agreement may be executed in counterparts and by facsimile or portable document

1 format (PDF), each of which shall be deemed an original, and all of which, when taken together,  
2 shall constitute one and the same document.

3 **17. AUTHORIZATION**

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

7 **IT IS SO AGREED.**

<p>8 Dated: May __, 2017</p> <p>9</p> <p>10 _____ Ms. Li-Hsueh Chiu, President 11 Clairdeco International Limited</p>	<p>8 Dated: May <sup>31</sup> __, 2017</p> <p>9</p> <p>10  11 Plaintiff Susan Davia</p>
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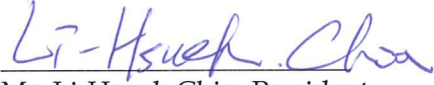
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<p>8 Dated: May <u>31</u>, 2017</p> <p>9 </p> <p>10 Ms. Li-Hsueh Chiu, President 11 Clairdeco International Limited</p>	<p>8 Dated: May __, 2017</p> <p>9 _____</p> <p>10 Plaintiff Susan Davia</p>
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