

**SETTLEMENT AGREEMENT
SUSAN DAVIA AG NOTICE 2015-01198**

1. INTRODUCTION

1.1 The Parties

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

1.2 Davia

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

1.3 Illinois Tool Works Inc.

ITW is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”). ITW is alleged to have been responsible for the manufacture and distribution of the Covered Products.

1.4 General Allegations

Davia alleges that ITW participated in the manufacture, distribution and/or sale, in the State of California, Covered Products that allegedly exposed users to DEHP without first providing “clear and reasonable warning” under Proposition 65. DEHP is listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical” or “DEHP.”

1.5 Notice of Violation

On November 23, 2015, Davia served ITW, Jackson’s Hardware, Inc., and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP, a toxic chemical found in Covered Products sold in California.

ITW received the November 23, 2015, 60-Day Notice of Violation. ITW represents that, as of the date it executes this Agreement, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to DEHP in the Covered Products, as identified in the 60-Day Notice.

1.6 No Admission

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

1.7 Consent to Jurisdiction

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

2. DEFINITIONS

2.1 The term "Covered Products" shall mean all Racor-branded utility and storage hooks covered, in whole or in part, with vinyl. Covered Products shall include, but not be limited to, Racor Heavy Duty and Regular Storage and Ladder Hooks, Racor Double and Triple Ski Hanger, Racor Garage Pro, Racor Bike Hanger, Racor Single Folding Bike Rack and Racor Sport Board Hanger.

2.2 The term "DEHP Free" Covered Products shall mean any component of any Covered Product containing less than or equal to 1,000 parts per million ("ppm") of DEHP, DBP, DINP, DIDP, DnHP and DIBP as determined by a minimum of duplicate quality controlled test results using Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies for determining the amount of these chemicals in a solid substance.

2.3 "Effective Date" shall mean July 22, 2016.

3. INJUNCTIVE-TYPE RELIEF

3.1 Products No Longer in ITW's Control

No later than July 29, 2016, ITW shall send a letter, electronic or otherwise ("Notification Letter") to (1) Jackson's Hardware, Inc., (2) each California customer and/or retailer to which ITW, after June 1, 2014, supplied any Covered Products, and (3) any California customer and/or retailer that ITW reasonably understands or believes had any inventory for resale in California of Covered Products as of January 1, 2016. The Notification Letter shall advise the recipient that the Covered Products received from ITW prior to approximately March 1, 2016 "contain DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm" and should be labelled with a California Proposition 65 warning. The Notification letter shall further inform the recipient that since approximately March 1, 2016, ITW has sold reformulated Covered Product (pursuant to Section 3.2) or labelled Covered Product with a Proposition 65 warning. ITW shall maintain records of all

correspondence or other communications generated pursuant to this Section for two years after the Effective Date and shall promptly produce copies of such records upon Davia's written request.

3.2 Product Reformulation Commitment

3.2.1 No later than the Effective Date, ITW shall provide the DEHP Free phthalate concentration standards of Section 2.2 to its then-current vendors or suppliers of any Covered Product and instruct its supplier not to incorporate any raw or component materials that do not meet or exceed the DEHP Free concentration standards of Section 2.2 into any Covered Product. ITW shall maintain copies of all supplier correspondence relating to the DEHP concentration standards and shall produce such copies to Davia within fifteen (15) days of receipt of written request from Davia made within six (6) months of the Effective Date.

3.2.2 After the Effective Date, ITW shall provide the DEHP Free phthalate concentration standards of Section 2.2 to any new vendors or suppliers of any Covered Product and instruct such supplier not to incorporate any raw or component materials that do not meet or exceed the DEHP Free concentration standards of Section 2.2 into any Covered Product. ITW shall maintain copies of all vendor correspondence relating to the DEHP concentration standards and shall produce such copies to Davia within fifteen (15) days of receipt of written request from Davia. Prior to purchase and acquisition of any Covered Product from any new vendor or supplier, ITW shall obtain a written confirmation and accompanying representative laboratory test result from the new vendor or supplier demonstrating compliance with the DEHP Free phthalate concentration standard in all relevant materials comprising the Covered Product. For every Covered Product ITW manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from a new vendor or supplier after the Effective Date, ITW shall maintain copies of representative testing of such Covered Products demonstrating compliance with this section, shall maintain copies of all vendor or supplier correspondence relating to the DEHP concentration standards, and shall produce such copies to Davia within fifteen (15) days of receipt of written request from Davia. Davia may only request production

of documents under this section two (2) times in any twelve month period following the Effective Date, and only in the first thirty-six months after the Effective Date.

3.2.3 After December 31, 2016, ITW shall not manufacture or cause to be manufactured, order or cause to be ordered, distribute or cause to be distributed or otherwise sell any Covered Product that is not DEHP Free. For every Covered Product ITW manufactures, causes to be manufactured, Orders, causes to be ordered or otherwise sells after December 31, 2016, ITW shall maintain copies of all testing of Covered Products demonstrating compliance with this section, shall maintain copies of all vendor or supplier correspondence relating to the DEHP concentration standards and shall produce such copies to Davia within fifteen (15) days of receipt of written request from Davia. Davia may only request production of documents under this section two (2) times in any twelve month period following December 31, 2016, and only until December 31, 2019.

3.3 Product Warnings

As of the Effective Date, and until December 31, 2016, ITW shall not sell or ship any Covered Product to a California vendor or retailer, or sell or ship any Covered Product to a vendor or retailer that ITW reasonably understands maintains retail outlets in the California, unless such Covered Products are sold or shipped with one of the clear and reasonable warnings set forth hereafter.

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

After December 31, 2016, ITW shall not manufacture or cause to be manufactured, distribute or cause to be distributed any Covered Product unless it is DEHP Free and shall not sell or ship to California, or to a retailer ITW reasonably understands maintains retail outlets in California, any products that are not DEHP Free even if labeled or accompanied by a Proposition 65 warning.

For all Covered Products requiring a warning under this Agreement, ITW shall affix a warning to the labeling of the Covered Product that states:

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

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

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

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

ITW may alternatively provide the following specific warning if it is reasonable to believe that other Proposition 65 chemicals may be present in the product:

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

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

WARNING: Certain products identified with this symbol ▼ contain a chemical 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, ITW must provide a header or footer directing the consumer to the warning language and definition of the designated symbol.

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

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

WARNING: This product contains a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

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

WARNING: Products identified on this page with the following symbol ▼ contain a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

4. MONETARY PAYMENTS

4.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b)(2), and in settlement of all claims alleged in the Notices or referred to in this Settlement Agreement and as a condition of settlement of all the claims referred to in this Consent to Judgment, ITW shall pay a total of \$10,000.00 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the total civil penalty funds paid to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the total civil penalty funds paid to Davia.

4.2 Augmentation of Penalty Payments

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

4.3 Reimbursement of Davia's Fees and Costs

The Parties acknowledge that Davia and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. ITW then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Davia and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, ITW shall pay Davia's counsel, on or before the Effective Date, the amount of \$33,000.00 for fees and costs incurred investigating, litigating and enforcing this matter. Such payment shall be made payable to "Sheffer Law Firm".

4.4 Payment Timing and Delivery Procedures

No later than July 29, 2016, ITW shall deliver payment of all civil penalty and attorney fee/cost amounts pursuant to Section 4.1 and Section 4.3 as follows:

1. a civil penalty check in the amount of \$7,500.00 payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2015-01198");
2. a civil penalty check in the amount of \$2,500.00 payable to "Susan Davia" (Tax ID to be supplied upon request by Formation), Memo line "Prop 65 Penalties, 2015-01198"); and
3. An attorney fee and cost reimbursement check in the amount of \$33,000.00 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2015-01198").

All penalty and fee/cost payments shall be delivered to the Sheffer Law Firm at the following address:

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

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

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

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

4.5 Issuance of 1099 Forms

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

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

4.6 Delayed or Non-Payment of Civil Penalties or Attorney Fees

While the obligations of this agreement are binding upon execution, the Release of ITW shall not become effective until after all Section 4.1 and Section 4.3 monetary payments have been made by ITW and all funds have cleared.

5. RELEASES

5.1 DAVIA'S RELEASE OF ITW

5.1.1 This settlement agreement is a full, final and binding resolution between Davia and ITW, of any violation of Proposition 65 that was or could have been asserted by Davia on behalf of herself, her representatives or attorneys, against ITW and its respective directors, officers, employees,

attorneys, assigns, predecessors, and successors and each entity to whom ITW directly or indirectly distributes or sells Covered Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, including but not limited to Jackson's Hardware, Inc. ("Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Covered Products that were manufactured, distributed, sold and/or offered for sale by ITW in California before the Effective Date.

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

5.1.3 Davia also, in her individual capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Davia, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by ITW or Releasees. Davia acknowledges that she is familiar with section 1542 of the California civil code, which provides as follows:

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

Davia, in her individual capacity expressly waives and relinquishes any and all rights and benefits that she may have under, or which may be conferred on her by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, excepting Section 4.2, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

This Section 5.1 release is expressly limited to those claims that arise under Proposition 65, as such claims relate to ITW's and Releasees' alleged failure to warn about exposures to or identification of the DEHP contained in the Covered Products and as such claims are identified in Ms. Davia's Proposition 65 60-Day Notice to Jackson's and ITW.

This Section 5.1 release is expressly limited to any alleged violations by Releasees that occur prior to September 15, 2016, and does not release any Releasee, entity or individual besides ITW from any liability for any violation of Proposition 65 regarding the Covered Products that occurs after September 15, 2016.

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

5.2 ITW's Release of Davia

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

or with respect to the Covered Products. ITW acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

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

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement ITW may ask Davia, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Davia agrees to reasonably cooperate with ITW and to use her best efforts, and that of her counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, ITW shall reimburse Davia and her counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$12,000.00, exclusive of fees and cost that

may be incurred on appeal. ITW will remit payment to the Sheffer Law Firm, at the address set forth in Section 9 below. Such additional fees shall be paid by ITW, within fifteen days after its receipt of any invoice from Davia for work performed under this paragraph. ITW understands no motion to approve any proposed consent judgment will be filed absent payment for the work performed under this paragraph. All payments owed to Davia, pursuant to Section 6 shall be made payable to "Sheffer Law Firm" (Memo Line "2015-01198") and delivered to the following payment address:

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

Any failure by ITW to timely pay Davia invoices under this Section shall result in the assessment of ten percent (10%) interest on any outstanding balance.

7. SEVERABILITY

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

8. GOVERNING LAW

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

9. NOTICES

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

For ITW to:

Ken Brown, CHMM
Manager of Environmental
and Chemical Compliance
Illinois Tool Works Inc.
155 Harlem Avenue
Glenview, IL 60025

With a copy to their counsel:

Joshua G. Simon
Call & Jensen
610 Newport Center Drive, Suite 700
Newport Beach, CA 92660

For Davia to:

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

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

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

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

11. MODIFICATION

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

12. ENTIRE AGREEMENT

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

13. ATTORNEY'S FEES

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

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

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

14. NEUTRAL CONSTRUCTION

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


15. COUNTERPARTS, FACSIMILE SIGNATURES

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

16. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: July <u>21</u>, 2016</p> <p> Angela Sheehan Vice President & General Manager ITW Brands, a division of ITW</p>	<p>Dated: July ____, 2016</p> <p>_____ Susan Davia</p>
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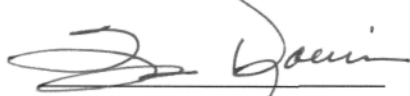
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16. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: July __, 2016</p> <p>_____</p> <p>Angela Sheehan Vice President & General Manager ITW Brands, a division of ITW</p>	<p>Dated: July __, 2016</p> <p> _____ Susan Davia</p>
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