

**PROPOSITION 65 SETTLEMENT AGREEMENT
SUSAN DAVIA AG NOTICES 2015-900, 2015-1096, 2015-1138 and 2015-01199**

1. INTRODUCTION

1.1 The Parties

This settlement agreement ("Agreement") is entered into by and between the noticing party (Susan Davia ("Davia")) and the notice recipients (The Hillman Companies, Inc. and The Hillman Group, Inc. ("Hillman")) with Davia and Hillman 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 The Hillman Companies, Inc. and The Hillman Group, Inc.

The Hillman Companies, Inc. and The Hillman Group, Inc. are each persons in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* ("Proposition 65"). The Hillman Companies, Inc. and The Hillman Group, Inc. are each alleged to have been responsible for the manufacture and distribution of the products subject to this Agreement.

1.4 General Allegations

Davia alleges that Hillman participated in the manufacture, distribution and/or sale, in the State of California, of: (1) vinyl coated utility hooks, including, but not limited to, Hardware Essentials Bike Hook (#008236914146) and (2) OOK cup hooks including, but not limited to, OOK 1 ¼ in White Cup Hook and OOK 7/8 in White Cup Hook) that exposed users to DEHP without first providing a "clear and reasonable warning" under Proposition 65. DEHP is listed as a carcinogen and reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the "Listed Chemical" or "DEHP."



1.5 Notices of Violation

On September 2, 2015, Davia served Hillman 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 Proposition 65 for failing to warn consumers of the presence of DEHP in vinyl coated utility hooks sold in California (AG Notice 2015-900). On October 20, 2015, Davia served Hillman, Jackson's Hardware, Inc. ("Jackson's") and various public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation" that provided public enforcers and the noticed entities with notice of the same alleged violations regarding DEHP (AG Notice 2015-1096). On October 29, 2015, Davia served Hillman and Jackson's with a document entitled "Supplemental Amended 60-Day Notice of Violation" that also provided public enforcers and the noticed entities with notice of the same alleged violations regarding DEHP (AG Notice 2015-1138). On November 23, 2015, Davia served Hillman, W.W. Grainger, Inc. ("Grainger") and various public enforcement agencies with a document entitled "60-Day Notice of Violation" that provided the noticed entities and public enforcers with notice of alleged violations of Proposition 65 for failing to warn consumers of the presence of DEHP in OOK Cup Hooks sold in California (AG Notice 2015-01199). For purposes of this Agreement, the September 2, 2015, October 20, 2015, October 29, 2015 and November 23, 2015 Notices, Supplemental Notice and Supplemental Amended Notice referenced above are collectively referred to as the "Notices".

Hillman received the Notices and 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 Notices.

1.6 No Admission

This Agreement resolves claims that are denied and disputed by Hillman. 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. Hillman denies the material factual and legal allegations



contained in the Notices and maintains that it did not knowingly or intentionally expose California consumers to DEHP through the reasonably foreseeable use of the products identified in the Notices and contends that, all products that 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 admission by Hillman 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 Hillman of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Hillman. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Hillman'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 Hillman as to the allegations in the Notices 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 any vinyl coated utility hook, including, but not limited to, Hardware Essentials Bike Hook (#008236914146) and any OOK Cup Hook including, but not limited to, OOK 1 ¼ in. White Cup Hook and OOK 7/8 in. White Cup Hook, distributed or caused to be distributed by Hillman.

2.2 The term "Phthalate Free" Covered Products shall mean Covered Products containing materials or other components that may be handled, touched or mouthed by consumers, and which materials or components are confirmed to contain less than or equal to 1,000 parts per million ("ppm") of DEHP, DBP, DINP, DIDP, DnHP and BBP through testing using Environmental



Protection Agency ("EPA") testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining the phthalate content in a solid substance. Testing to determine the phthalate content in the Covered Products, and if the Covered Products are Phthalate Free within the meaning of this Section, shall be performed on appropriate samples of the finished product (as opposed to the raw material used for manufacture of the Covered Products) by a laboratory that is either certified by the State of California or accredited by the State of California, a federal agency, the National Environmental Laboratory Accrediting Program or similar nationally recognized accrediting organization to perform the particular method of detection and analysis in question. Hillman will maintain copies of documents that relate to the Phthalate content (or lack thereof) of the Covered Products and will produce copies of the same to Davia within fifteen (15) business days of receipt of a written request by Davia for the same.

2.3 "Effective Date" shall mean August 1, 2016.

3. INJUNCTIVE-TYPE RELIEF

3.1 Products No Longer in Hillman's Control

No later than the Effective Date, Hillman shall send a letter, electronic or otherwise ("Notification Letter") to: (1) Jackson's; (2) each California customer and/or retailer to which Hillman, after June 1, 2015, supplied any Covered Products; and (3) any California customer and/or retailer that Hillman reasonably understands or believes had any inventory for resale in California of Covered Products as of January 1, 2016 that advises the recipients that the Covered Products "contain DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm" and advises recipient that Hillman will, for any Covered Products remaining in the customer's inventory, either: (i) post Proposition 65 warning signs (that comply with Section 3.3(b)) in the customer's retail stores for those Covered Products, (ii) label any such Covered Products with Proposition 65 warnings (that comply with Section 3.3(a)) or accept the return to Hillman, at Hillman's sole expense, of all units of the Covered Product held for sale in California, or to California Customers.



The Notification Letter shall require the recipients to respond within 15 business days and to advise Hillman if the recipients have any Covered Products in their inventory. For California customers who advise that they have Covered Products in their inventory, Hillman shall maintain records for at least two years, confirming whether Hillman either labeled the Covered Products with Proposition 65 warnings, posted Proposition 65 warning signs in the customer's retail store or obtained the return of the remaining inventory of Covered Products. Hillman 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

After November 1, 2016, Hillman shall not distribute for sale any Covered Products that are not Phthalate Free (as that term is defined in Section 2.2 of this Agreement). Hillman 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 written request from Davia.

3.3 Warnings

Between August 1, 2016, and November 1, 2016, Hillman shall not sell or ship any Covered Product that is not Phthalate Free to a United States vendor or retailer, or sell or ship any Covered Product to a vendor or retailer that Hillman reasonably understands maintains retail outlets in the United States, unless such Covered Products are either (1) proven to be Phthalate Free pursuant to Section 2.2 of this Agreement or (2) shipped with one of the clear and reasonable warnings set forth hereafter.

Each warning utilized by Hillman to comply with this agreement 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 of purchase or use. The warnings shall be provided in a manner such that consumers or users can be expected to reasonably understand to which *specific* Covered Product the warning applies, so as to minimize the



risk of consumer confusion.

After November 1, 2016, Hillman shall not distribute or otherwise sell any Covered Product unless it is Phthalate Free and shall not sell any products that are not Phthalate Free regardless of whether a Proposition 65 warning accompanies the product or not.

(a) **Product Labeling and/or Packaging Warnings.**

Warnings that are affixed to the packaging, labeling or directly on each Covered Product that Hillman distributes for sale in California after August 1, 2016 and before November 1, 2016 and that are not Phthalate Free (as that term is defined in Section 2.2 of this Agreement) shall state:

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

or

CALIFORNIA PROPOSITION 65 WARNING:
This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. **Wash Hands After Handling.**

(b) **Point of Sale Warnings:**

Alternatively, for Covered Product that Hillman distributes for sale in California after August 1, 2016 and before November 1, 2016, that are not Phthalate Free (as that term is defined in Section 2.2 of this Agreement) Hillman may: (i) provide warnings signs to their California customers with instructions to post the warnings in immediate proximity to the point of display of the Covered Products, or (ii) cause such warning signs to be posted in their California customers' retail stores in immediate proximity to the point of display of the Covered Products, that state:

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

or



CALIFORNIA PROPOSITION 65 WARNING:

This product contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.
Wash Hands After Handling.

Where more than one Covered Product is sold in close proximity to other like items or to those that do not require Proposition 65 warnings, the following statement can be used:

WARNING: The following products contain a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.
(List products for which the warning is required)

4. MONETARY PAYMENTS

4.1 Civil Penalty

In settlement of all the claims referred to in this Agreement, Hillman shall pay a total of \$8,000.00 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Davia. All penalty payments shall be delivered to the addresses listed in Section 4.4 below

4.2 Augmentation of Penalty Payments

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon Hillman 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 Hillman evidence that the Covered Products have been distributed by Hillman in sales volumes materially different than those identified by Hillman prior to execution of this Agreement, then Hillman shall be liable for an additional penalty amount of \$10,000.00 and reasonable, additional attorney fees expended by Davia in discovering such additional sales. Davia agrees to provide Hillman with a written demand for all such additional penalties and attorney fees ("Demand") under this



Section. Davia agrees that the Demand shall identify the: (1) alleged correct amount of Hillman's California Covered Products sales; (2) California Covered Product sales earlier reported by Hillman to Davia and (3) source of the alleged correct sales information. Davia further agrees that any Demand for attorneys' fees must be itemized in such manner as to reasonably support the attorney fee demand being made. After its receipt of such Demand, Hillman shall have sixty (60) days to "meet and confer" with Davia and reach agreement with Davia as to the amount of fees and penalties owing by Hillman and to 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 sixty (60) day period pass without the Parties having reached a resolution and payment made, then Davia shall be entitled to file a formal legal claim for damages for breach of this contract. The prevailing party shall be entitled to recover its reasonable attorney fees and costs relating to the prosecution or defense of 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. Hillman 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, Hillman shall pay Davia's counsel the amount of \$38,000.00 for fees and costs incurred investigating, litigating and enforcing this matter. Such payment shall be made payable to "Sheffer Law Firm".

4.4 Payment Procedures

4.4.1 Hillman shall satisfy its obligation to pay civil penalties pursuant to Section 4.1 by delivery of a civil penalty check payable to "OEHHHA" (EIN 68-0284486, memo line "Prop. 65 penalties,



2015-01138 and 2015-01199"), in the amount of \$2,000.00 and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied on request, memo line "Prop. 65 penalties, 2015-01138 and 2015-01199") in the amount of \$6,000.00.

4.4.2 Hillman shall satisfy its obligation to pay civil penalties pursuant to Section 4.2 by delivery of a civil penalty check payable to "OEHHA" (EIN 68-0284486, memo line "Prop. 65 penalties, 2015-01138 and 2015-01199"), in the amount of 75% of the total section 4.2 penalty and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied upon request, memo line "Prop. 65 penalties, 2015-01138 and 2015-01199") in the amount of 25% of the total section 4.2 penalty.

4.4.3 Hillman shall satisfy its obligation to pay attorney fees and costs pursuant to Section 4.3 by delivery of a check payable to "Sheffer Law Firm" (EIN 55-08-58910, memo line "2015-01138 and 2015-01199") in the amount of \$38,000.00.

4.4.4 Hillman shall satisfy its obligation to pay attorney fees and costs pursuant to section 4.2 by delivery of a check payable to "Sheffer Law Firm" (memo line "2015-01138 and 2015-01199") on or before the date and in the amount agreed upon or ordered pursuant to Section 4.2.

All civil penalty and attorney fee/cost payments pursuant to Sections 4.1 and 4.3 shall be delivered to plaintiff's counsel at the following address on or before the Effective Date:

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

4.5 Issuance of 1099 Forms

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

- (a) A Form 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 Section 4.1 and any later amount paid pursuant to Section 4.2;
- (b) A Form 1099 shall be issued to Davia in the amount paid pursuant to Section 4.1



and any later paid pursuant to Section 4.2; and

(c) A Form 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Sections 4.2 and 4.3.

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

Hillman's failure to deliver any of the above-referenced civil penalties or attorney fee/cost payments to the designated location and by the required date shall result in imposition of a 10% per annum simple interest assessment on the undelivered payment(s) until delivery. While the obligations of this Agreement are binding upon execution, the Release of Hillman and any other entity under this Agreement shall not become effective until all monetary payments have been made by Hillman and all funds have cleared.

5. RELEASES

5.1 DAVIA'S RELEASE OF HILLMAN

5.1.1 This Agreement is a full, final and binding resolution between Davia and Hillman of any violation of Proposition 65 that was or could have been asserted by Davia on behalf of herself, her past and current representatives or attorneys, against Hillman, its parents, subsidiaries, affiliated entities, directors, officers, employees, attorneys, and each entity to whom Hillman directly or indirectly distributes or sells Covered Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers (including, but not limited to, Jackson's Hardware, Inc. ("Jackson's") and W.W. Grainger, Inc. ("Grainger")), franchisees, cooperative members, and licensees ("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 Hillman 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 of 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 DEHP, DBP, DINP, DIDP, DnHP and BBP in the Covered Products manufactured, distributed, sold and/or offered for sale by Hillman before the Effective Date (collectively "claims"), against Hillman 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 Notices as to Covered Products manufactured, distributed or sold by Hillman 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 she 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 Hillman's and Releasees alleged failure to warn about exposures to or identification of DEHP, DBP, DINP, DIDP, DnHP and BBP contained in the Covered Products and as



such claims are identified in Davia's Notices identified above.

This Section 5.1 release is expressly limited to any alleged violations that occur prior to August 1, 2016, and does not release any Releasee, entity or individual besides Hillman and Releasees from any liability for any violation of Proposition 65 regarding the Covered Products that occurs after August 1, 2016.

The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than Hillman, 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 Hillman.

5.2 Release of Davia

The Release by Davia is mutual. Hillman 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 Products. Hillman 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.

Hillman 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 it may lawfully waive such rights or benefits pertaining to the released matters. In



furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Agreement, Hillman may ask Davia, in writing, to file a complaint, incorporate the terms of this 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 Hillman 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, Hillman will reimburse Davia and her counsel for their reasonable fees and costs incurred in filing the complaint, converting the 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. Hillman will remit payment to the Sheffer Law Firm, at the address set forth in Section 9 below. Such additional fees shall be paid by Hillman within ten days after its receipt of an itemized invoice from Davia for work performed under this paragraph. Hillman 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 delivered to the following payment address:

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



Hillman's failure to timely pay Davia invoices under this Section shall result in the assessment of ten percent (10%) per annum 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. Should Proposition 65 be repealed or otherwise rendered inapplicable by reason of law generally or as to the Covered Products, then Hillman may move this Marin County Superior Court, after proper notice to Davia, for a finding and order that Hillman shall have no further obligations pursuant to this Agreement.

9. NOTICES

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

For The Hillman Companies, Inc. and/or The Hillman Group, Inc. to:

Douglas D. Roberts, Esq.
The Hillman Companies, Inc.
The Hillman Group, Inc.
10590 Hamilton Ave.
Cincinnati, Ohio 45231

With a copy to their counsel:

John E. Dittoe, Esq.
Law Office of John E. Dittoe
70 Hazel Lane
Piedmont, CA 94611

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 be deemed the "prevailing party" on any motion, application for order to show cause or other proceeding to enforce a violation of a material provision of this Agreement, or to defend against any motion, application or other proceeding by Hillman to enforce a violation of this Agreement, then Davia may be entitled to recover her reasonable attorney fees and costs



incurred as a result of bringing such motion, order or application, consistent with C.C.P. § 1021.5 or defending against Hillman's motion, application or other proceeding. Should Hillman be deemed the "prevailing party" on any motion, application for order to show cause or other proceeding to enforce a violation of a material provision of this Agreement, or to defend against any motion, application or other proceeding by Davia to enforce a violation of this Agreement, then Hillman may be entitled to recover its reasonable attorney fees and costs incurred as a result of bringing such motion, order or application or defending against Davia's motion, application or other proceeding.

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

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. ENFORCEMENT

Before moving to enforce the terms and conditions of this Agreement with respect to Hillman's alleged sale of Covered Products that are not Phthalate Free (as that term is defined in Section 2.2 of this Agreement), or do not otherwise comply with Section 3 of this Agreement, Davia



shall notify Hillman, in writing, of such alleged violation (Probationary Notice of default). In such Probationary Notice of Default, Davia shall identify: (i) each Covered Product that was allegedly not Phthalate Free (as that term is defined in Section 2.2 of this Agreement) or was otherwise sold in violation of Section 3 of this Agreement; (ii) the place or places where each such violative Covered Product was purchased, (iii) the dates each such violative Covered Product was purchased and (iv) the facts supporting the allegation that such Covered Product was not Phthalate Free (as that term is defined in Section 2.2 of this Agreement) or was otherwise in violation of Section 3 of this Agreement. In the event, Hillman, no later than thirty (30) days after its receipt of such Probationary Notice of Default, does not provide Davia with a test report from a laboratory that satisfies Section 2.2 of this Agreement, that supports Hillman's claim that such product or products were Phthalate Free, then Hillman shall pay Davia, as a stipulated penalty, the sum of \$10 per violative unit, up to a maximum of \$10,000 for each Probationary Notice of Default and shall pay Davia her reasonable attorney fees (if agreed upon by the Parties). In the event Hillman wishes to contest the Probationary Notice of Default, Hillman shall provide Davia with evidence in support of its position and if Davia agrees with Hillman, then Davia shall not take any further action. However, should Davia disagree with Hillman's position, then Davia shall, within thirty (30) days of receipt of all information from Hillman supporting its dispute of the Probationary Notice of Default, provide Hillman in writing with the reasons for its disagreement. Should the Parties be unable to resolve their dispute, Davia may seek to enforce the terms of this Agreement. The prevailing party shall retain their right to recover their attorneys' fees and costs incurred in: (1) securing enforcement of this Agreement under this Section or (2) defending against enforcement of this Agreement under this Section.

Hillman may avail itself of the stipulated penalty option described above at least two times



and only thereafter with Davia's consent. After the assessment of the first two stipulated penalties under this Section, and absent other consent by Davia, the amount of any subsequent penalty assessment will be negotiated by the Parties or resolved by the Court or an agreed upon arbitrator.


16. 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.

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

<p>Dated: July <u>22</u>, 2016</p>  <p>_____ Douglas D. Roberts The Hillman Companies, Inc. The Hillman Group, Inc.</p>	<p>Dated: July __, 2016</p> <p>_____ Susan Davia</p>
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and only thereafter with Davia's consent. After the assessment of the first two stipulated penalties under this Section, and absent other consent by Davia, the amount of any subsequent penalty assessment will be negotiated by the Parties or resolved by the Court or an agreed upon arbitrator.

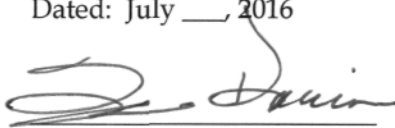
16. COUNTERPARTS, FACSIMILE SIGNATURES

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.

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

<p>Dated: July __, 2016</p> <p>_____ Douglas D. Roberts The Hillman Companies, Inc. The Hillman Group, Inc.</p>	<p>Dated: July __, 2016</p>  <p>_____ Susan Davia</p>
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