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6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF MARIN  
9 UNLIMITED CIVIL JURISDICTION

10  
11 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 OLD DUTCH INTERNATIONAL LTD.,  
BEVERAGES & MORE, INC., BEVMO  
15 HOLDINGS, LLC, BED BATH & BEYOND,  
INC. and DOES 1-150 and DOES 1-150,

16 Defendants.  
17

Case No. CIV1603916

**CONSENT TO JUDGMENT SETTLEMENT  
AGREEMENT**

Action Filed: October 27, 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 Old Dutch International, Ltd.  
5 (“Old Dutch”) with Old Dutch referred to as “Settling Defendant” and Davia and Old Dutch  
6 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 Defendant**

12 For purposes of this Agreement, Old Dutch represents that it employs 10 or more persons and  
13 is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic  
14 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Davia alleges that Old Dutch and defendants Beverages & More, Inc., BevMo Holdings, LLC  
17 (collectively “BevMo”) and Bed Bath & Beyond, Inc. (“Bed Bath”) manufactured, distributed and/or  
18 sold, in the State of California, certain types of kitchenware and barware with brass handles or other  
19 brass components that exposed users to Lead without first providing “clear and reasonable warning”  
20 under Proposition 65. Lead is listed as a reproductive and developmental toxicant pursuant to  
21 Proposition 65 and is referred to hereinafter as the “Listed Chemical” or “Lead.”

22 **1.5 Notice of Violation**

23 On March 22, 2016, Davia served Old Dutch, BevMo and Bed Bath with a Proposition 65 60-  
24 Day Notice of Violation, together with a Certificate of Merit, that provided public enforcers and these  
25 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
26 consumers of the presence of the Lead in brass-handled kitchenware and barware products sold in  
27 California.

28

1 Each Old Dutch, BevMo and Old Dutch received the March 22, 2016, notice of violation  
2 (hereafter, collectively, "Notice"). Old Dutch represents that, as of the date it executes this  
3 Agreement, it believes that no public enforcer is diligently prosecuting a Proposition 65 enforcement  
4 action related to the Listed Chemical in the covered products, as identified in the Notice.

5 **1.6 Complaint**

6 On October 27, 2016, Davia, acting in the interest of the general public in California, filed a  
7 Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV  
8 1603916 alleging violations by Old Dutch, BevMo, Bed Bath and Does 1-150 of Health & Safety Code  
9 § 25249.6 based, *inter alia*, on the alleged consumer exposures to Lead contained in the Covered  
10 Products (defined below).

11 **1.7 No Admission**

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

25 **1.8 Consent to Jurisdiction**

26 For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction over  
27 Settling Defendant as to the obligations contained in the Agreement, that venue is proper in County  
28 of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Agreement.

1 As an express part of this Agreement, pursuant to C.C.P. §664.6, the Court in which this action was  
2 filed shall retain jurisdiction over the Parties to enforce this Agreement until performance in full of  
3 the terms of the settlement.

4 **2. DEFINITIONS**

5 **2.1** The term “Covered Product” means any Old Dutch brand barware and kitchenware  
6 product manufactured by Old Dutch, or its designated suppliers on its behalf, with brass handles  
7 including, but not limited to 2 oz., 14 oz., 16 oz., 20 oz. and 32oz straight and round sided Moscow  
8 Mule mugs with brass handles (including, but not limited to #418, #428, #OS428, #OS428H, #429H,  
9 #437, #440, #OS440, #440H, #442, #483, #499H), copper pitchers with brass handles (including but  
10 not limited to #809, #1203), canisters with brass handles (including but not limited to #1243),  
11 colanders with brass handles (including but not limited to #870) and serving trays with brass handles  
12 (including but not limited to #250).

13 **2.2** The term “Lead Limited” products shall refer to Covered Products whose brass  
14 handles or components reasonably may be handled, touched or mouthed by a consumer, and which  
15 materials each yield less than 100 parts per million (“ppm”) lead when such material is analyzed  
16 pursuant to EPA testing methodologies 3050B and 6010B, or methodologies utilized by Federal or  
17 State agencies, including methods required or allowed under the Federal Hazardous Substances Act,  
18 the Consumer Product Safety Act (“CPSA”) or the Food, Drug and Cosmetics Act, for the purpose of  
19 determining lead content and hazardous exposure to lead in a solid substance.

20 **2.3** “Manufactured” and “manufactures” have the meaning defined in Section 3(a)(10) of  
21 the CPSA [15 U.S.C. § 2052(a)(10)], as amended from time to time.

22 **2.4** The “Effective Date” of this Consent to Judgment shall be the date on which it is  
23 entered as a judgment by the Court.

24 **3. NON-MONETARY RELIEF**

25 **3.1 Formulation Commitment**

26 **3.1.1** No later than July 1, 2017, Old Dutch shall provide each vendor of each Covered  
27 Product the Lead Limited concentration standards of Section 2.3 and instruct them not to incorporate  
28 any brass materials into the handles or other components of such product that do not meet the Lead

1 Limited concentration standards of Section 2.3. Old Dutch shall maintain copies of all vendor  
2 correspondence demonstrating compliance with this section and shall produce such copies to Davia  
3 within thirty (30) days of receipt of written request from Davia, as long as such request is made within  
4 two (2) years after the Effective Date.

5 **3.1.2** At any time after July 1, 2017, that Old Dutch arranges with a New Vendor of Covered  
6 Product, Old Dutch shall provide such vendor the Lead Limited concentration standards of Section  
7 2.3 and instruct such New Vendor not to incorporate any brass materials into the handles of such  
8 product that do not meet the Lead Limited concentration standards of Section 2.3. "New Vendor"  
9 shall mean any vendor of Covered Products from whom Old Dutch was not purchasing Covered  
10 Products as of July 1, 2017. Prior to purchase and acquisition of any Covered Product from any New  
11 Vendor, Old Dutch shall obtain a written confirmation and accompanying laboratory test result of a  
12 representative sample from the New Vendor demonstrating compliance with the Lead Limited  
13 concentration standard in the brass handle or other brass component materials comprising the  
14 Covered Product. For every Covered Product Old Dutch obtains from a New Vendor after the  
15 Effective Date, Old Dutch shall maintain, for a period of two years, copies of all testing of  
16 representative samples of such products demonstrating compliance with this section as provided by  
17 vendor and shall maintain copies of all New Vendor correspondence relating to the Lead Limited  
18 concentration standards and shall produce such copies to Davia within thirty (30) days of receipt of  
19 written request from Davia, as long as such request is made within two (2) years after the Effective  
20 Date.

21 **3.1.3** As of July 1, 2017, Old Dutch shall not order, manufacture (for orders placed after July  
22 1, 2017) or cause to be manufactured (for orders placed after July 1, 2017) any Covered Product that  
23 is not Lead Limited. For every Lead Limited Covered Product Old Dutch orders, manufactures or  
24 causes to manufacture after July 1, 2017 pursuant to this paragraph, Old Dutch shall maintain copies  
25 of all confirmations and testing of representative samples of such products demonstrating  
26 compliance with this section and shall produce such copies to Davia within thirty (30) days of receipt  
27 of written request from Davia, as long as such request is made no later than July 1, 2022.

28 **3.2 Previously Obtained or Distributed Covered Products.**



1 other reproductive harm. Wash hands after  
2 handling.

3 Or:

4 **WARNING:** This product can expose you to chemicals  
5 including lead, which are known to the  
6 State of California to cause cancer and birth  
7 defects or other reproductive harm. For  
8 more information go to  
9 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

8 The last warning may be preceded by a yellow or white triangle, outlined in bold black and  
9 containing a black exclamation point.

10 **3.2.2** Old Dutch shall maintain records of compliance correspondence, inventory reports or  
11 other communication confirming compliance with § 3.2.1 to such accounts for one (1) year from the  
12 Effective Date and shall produce copies of such records upon written request by Davia subject to the  
13 same terms listed in section 3.1.2 governing when Davia may request information.

14 **3.3 Old Dutch Warning Obligations**

15 As to Covered Products manufactured or ordered before July 1, 2017, Old Dutch shall provide  
16 warnings for Covered Products that do not meet the Lead Limited standard in accordance to the  
17 provisions set forth below.<sup>2</sup> In the event that the Office of Environmental Health Hazard Assessment  
18 (“OEHHA”) promulgates regulations after June 1, 2017, which regulations impose new or different  
19 requirements for Proposition 65 safe harbor warnings for consumer product exposures that are not  
20 consistent with the obligations of this Section 3.3., Old Dutch may only revise its warning obligations  
21 under this Agreement by amendment to this Agreement through a noticed Motion to the Marin  
22 County Superior Court. Before Old Dutch files any such motion with the Court, it shall meet and  
23 confer with counsel for plaintiff, for a period of no less than thirty (30) days, to attempt to secure  
24 plaintiff’s stipulation to the proposed, revised warning obligation as purportedly dictated by the  
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26 \_\_\_\_\_  
27 <sup>2</sup> Prior to execution of this Agreement, a warning program for certain Covered Products included the following  
28 language: “WARNING: Use of this product will expose you to chemicals known to the State of California to cause  
cancer, birth defects or other reproductive harm.” Any use of this warning language for Covered Products shall be  
deemed in compliance with this Agreement so long as such language was placed on any Covered Product prior to  
August 1, 2017.

1 revised OEHHA regulation. Any motion filed by Old Dutch shall also be served upon the California  
2 Office of the Attorney General and provide for a minimum of 45 days of notice. Each Party shall bear  
3 its own costs and fees incurred in connection with any such Motion under this section.

### 4 **3.3.1 Product Labeling**

5 As of August 1, 2017, Old Dutch shall not manufacture, import and sell any Covered Product  
6 to a California Customer unless such Covered Product is Lead Limited or is labeled with a clear and  
7 reasonable warning that states either:

8 **WARNING:** This product contains lead, a chemical  
9 known to the State of California to cause  
10 birth defects or other reproductive harm.

11 Or:

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

15 Or:

16 **WARNING:** The brass component(s) of this product can  
17 expose you to lead, a chemical known to the  
18 State of California to cause birth defects or  
19 other reproductive harm. Wash hands after  
20 handling.

21 Or:

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

25 Or:

26 **WARNING:** This product can expose you to chemicals  
27 including lead, which are known to the  
28 State of California to cause cancer and birth  
defects or other reproductive harm. For  
more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The last warning may be preceded by a yellow or white triangle, outlined in bold black and containing a black exclamation point. "California Customer" means a direct Old Dutch customer of Covered Product with a California ship-to address or a retail customer of Old Dutch with a ship to address that Old Dutch reasonably understands is a distribution center or other warehouse for retail



1 outlets in California.

2 Each warning required by this section shall be printed in Bookman Antiqua 9 point font (or  
3 equivalent) and shall be prominently placed with such conspicuousness as compared with other  
4 words, statements, designs, or devices as to render it reasonably likely to be read and understood by  
5 an ordinary individual under customary conditions *before* purchase or use. Each warning shall be  
6 provided in a manner such that the consumer or user is reasonably likely to understand to which  
7 *specific* Covered Product the warning applies, so as to minimize the risk of consumer confusion. Such  
8 warning obligations are not applicable to any Lead Limited Covered Product.

9 In lieu of product labeling, Old Dutch, in its sole discretion, may notify California Customers  
10 of the requirement to provide clear and reasonable Proposition 65 warnings for the California sale of  
11 Covered Products that do not meet the Lead Limited standard. Such notification shall be made in  
12 writing to such customers, and shall include at least three sheets of white background, adhesive,  
13 Proposition 65 Warning stickers, printed on labels no less than 0.75" x 3" with one of the following  
14 warnings below in no less than Book Antiqua, 9 point font (or its equivalent) and shall separately  
15 identify each of at least one of the alternative warning statements set forth in this Section 3.3.1 as the  
16 warning options to be used in connection with the California sale of any Lead Limited Covered  
17 Products an example of clear and reasonable warning text.

### 18 **3.3.2 Old Dutch's Internet Warning Obligation**

19 After August 1, 2017, any internet or ecommerce website maintained by, or on behalf of, Old  
20 Dutch, that where Old Dutch offers such Covered Product for sale, shall include a warning,  
21 identifying each specific Covered Product to which the warning applies. One of the following  
22 warning statements shall be used and shall appear on such website in the manner as set forth in Title  
23 27, California Code of Regulations, Section 25602(b):

24 **WARNING:** This product contains lead, a chemical  
25 known to the State of California to cause  
26 birth defects or other reproductive harm.

27 Or:

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

Or:

**WARNING:** The brass component(s) of this product can expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. Wash hands after handling.

Or:

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

Or:

**WARNING:** This product can expose you to chemicals including lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The last warning may be preceded by a yellow or white triangle, outlined in bold black and containing a black exclamation point.

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 one of the following warning statements also appears elsewhere on the same website page, as follows:

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

Or:

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

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Or:

**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.

Or:

**WARNING:** The brass component(s) of products identified on this page with the following symbol ▼ can expose you to lead, a chemical to the State of California to cause birth defects or other reproductive harm. Wash hands after handling.

Or:

**WARNING:** Products identified on this page with the following symbol ▼ can expose you to chemicals including lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The last warning may be preceded by a yellow or white triangle, outlined in bold black and containing a black exclamation point.

**3.3.3 Old Dutch’s Catalog Warning Obligation**

After August 1, 2017, for so long as Old Dutch continues to maintain inventory of a Covered Product that is not Lead Limited, any product catalog printed or caused to be printed by Old Dutch in which Old Dutch offers any such Covered Product for sale shall include one of the warning statements below in such catalog in the manner set forth under Title 27, California Code of Regulations, Section 25602(c):

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

Or:

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

Or:

**WARNING:** The brass component(s) of this product can expose you to lead, a chemical known to the State of California to cause birth defects or other reproductive harm. Wash hands after handling.

Or:

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

Or

**WARNING:** This product can expose you to chemicals including lead, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

The last warning may be preceded by a yellow or white triangle, outlined in bold black and containing a black exclamation point.

Alternatively, Old Dutch may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with one of the following texts on the inside of the front or back cover of the catalog or designated page for warning information or on the same page as any order form for the Covered Product(s):

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

Or:

**WARNING:** Products identified on this page with the following symbol ▼ contains a chemical

1 known to the State of California to cause  
2 birth defects or other reproductive harm.

3 Or:

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

9 Or:

10 **WARNING:** The brass component(s) of products  
11 identified on this page with the following  
12 symbol ▼ can expose you to lead, a chemical  
13 to the State of California to cause birth  
14 defects or other reproductive harm. Wash  
15 hands after handling.

16 Or:

17 **WARNING:** Products identified on this page with the  
18 following symbol ▼ can expose you to  
19 chemicals including lead, which are known to  
20 the State of California to cause cancer and  
21 birth defects or other reproductive harm. For  
22 more information go to  
23 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

24 The last warning may be preceded by a yellow or white triangle, outlined in bold black and  
25 containing a black exclamation point.

26 The designated symbol must appear on the same page and in close proximity to the display  
27 and/or description of the Covered Product. On each page where the designated symbol appears,  
28 Old Dutch must provide a header or footer directing the consumer to the warning language and  
definition of the designated symbol.

After July 1, 2020, Old Dutch shall not sell or otherwise distribute any Covered Product to a  
California Customer that is not Lead Limited (regardless of whether it is accompanied by a  
Proposition 65 clear and reasonable warning).

#### 4. MONETARY PAYMENTS

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

1 As a condition of settlement of all the claims referred to in this Consent to Judgment, Old  
2 Dutch shall pay a total of \$14,000 in civil penalties in accordance with California Health & Safety  
3 Code § 25249.12(c)(1) & (d).

#### 4 **4.2 Augmentation of Penalty Payments**

5 For purposes of the penalty assessment under this Agreement, plaintiff is relying entirely  
6 upon defendant and its counsel for accurate, good faith reporting to plaintiff of the nature and  
7 amounts of relevant sales activity. If within six (6) months of the Effective Date, plaintiff discovers  
8 and presents to Settling Defendant reasonably reliable evidence that any type of Covered Product  
9 was distributed, prior to the execution of this Consent to Judgment, by Settling Defendant in sales  
10 volumes materially different than those identified for the same time period by such Settling  
11 Defendant prior to execution of this Consent to Judgment, then such misrepresenting Settling  
12 Defendant shall be liable for an additional penalty amount of up to \$10,000 for Covered Product sold  
13 prior to execution of this Consent to Judgment but not identified by such defendant to plaintiff.  
14 Settling Defendant shall also be liable for any reasonable, additional attorney fees, up to \$10,000,  
15 expended by plaintiff in discovering applicable additional retailers or sales for such defendant.  
16 Plaintiff agrees to provide such misrepresenting Settling Defendant with a written demand for all  
17 such additional penalties and attorney fees under this Section. After service of such demand, such  
18 defendant shall have thirty (30) days to agree to the amount of fees and penalties owing and submit  
19 such payment to plaintiff in accordance with the method of payment of penalties and fees identified  
20 in Sections 4.4 and 4.5. Should this thirty (30) day period pass without any such resolution between  
21 the parties and payment of such additional penalties and fees, plaintiff shall be entitled to file a formal  
22 legal claim for additional civil penalties pursuant to this section and shall be entitled to all reasonable  
23 attorney fees and costs relating to such claim.

#### 24 **4.3 Reimbursement of Plaintiff's Fees and Costs**

25 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without  
26 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
27 issue to be resolved after the material terms of the agreement had been settled. Old Dutch then  
28 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been

1 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Davia  
2 and her counsel under general contract principles and the private attorney general doctrine codified  
3 at California Code of Civil Procedure section 1021.5, for all work performed in this matter, except  
4 fees that may be incurred on appeal. Under these legal principles, Old Dutch shall pay the amount  
5 of \$50,000 for fees and costs incurred investigating, litigating and enforcing this matter, including the  
6 fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's  
7 approval of this Agreement in the public interest.

8 **4.4 Payment Timing**

9 Old Dutch shall deliver all settlement payment funds required by this Agreement to its  
10 counsel within two weeks of the date that this Agreement is fully executed by the Parties. Old  
11 Dutch's counsel shall confirm receipt of settlement funds in writing to plaintiff's counsel and,  
12 thereafter, hold the amounts paid in trust until such time as the Court approves this settlement  
13 contemplated by Section 7.

14 Within two business days of the date plaintiff provides notice to counsel for Old Dutch that  
15 the Court has approved this settlement, Old Dutch's counsel shall deliver the settlement payments  
16 to plaintiff's counsel as follows:

- 17 1. a civil penalty check in the amount of \$10,500 payable to "OEHHA" (EIN: 68-0284486,  
18 Memo line "Prop 65 Penalties, 2016-00220");
- 19 2. a civil penalty check in the amount of \$3,500 payable to "Susan Davia" (Tax ID to be  
20 supplied, Memo line "Prop 65 Penalties, 2016-00220"); and
- 21 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the amount  
22 of \$50,000 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2016-00220")

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

25 Sheffer Law Firm  
26 Attn: Proposition 65 Controller  
27 81 Throckmorton Ave., Suite 202  
28 Mill Valley, CA 94941

1 Old Dutch shall deliver all Section 4.2 additional civil penalty and attorney fee/cost payments  
2 by delivering such Section 4.2 settlement payments, on or before the date agreed upon pursuant to  
3 Section 4.2 or ordered by the Court, to Plaintiff's counsel as follows:

4 1. a civil penalty check in the amount of 75% of the penalty agreed upon or ordered by  
5 the Court pursuant to Section 4.2 payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop  
6 65 Penalties, 2016-00220");

7 2. a civil penalty check in the amount of 25% of the penalty agreed upon or ordered by  
8 the Court pursuant to Section 4.2 payable to "Susan Davia" (EIN: to be supplied upon  
9 request), Memo line "Prop 65 Penalties, 2016-00220"); and

10 3. An attorney fee and cost reimbursement check, in the amount agreed upon or ordered  
11 by the Court pursuant to Section 4.2 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo  
12 line "2016-00220").

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

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

## 19 5. CLAIMS COVERED AND RELEASED

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

21 5.1.1. This Agreement is a full, final, and binding resolution between Davia, on behalf of  
22 herself, her past and current agents, representatives, attorneys, successors, and/or assignees, and in  
23 the interest of the general public, and Old Dutch and each of its owners, officers, directors,  
24 shareholders, employees, agents, parent companies, subsidiaries, divisions, affiliates, distributors,  
25 franchisees, marketplace hosts, direct and indirect customers (including but not limited to Beverages  
26 & More, Inc., BevMo Holdings, LLC and Bed Bath & Beyond, Inc.), attorneys, successors, licensors  
27 and assigns ("Defendant Releasees") of any violation of Proposition 65 that has been or could have  
28 been asserted against Defendant Releasees regarding the failure to warn about exposure to any Listed



1 Chemical arising in connection with any Covered Product manufactured, sourced, distributed, or  
2 sold by Old Dutch prior to the Effective Date. Settling Defendant's compliance with this Agreement  
3 shall be deemed compliance with Proposition 65 with respect to the Listed Chemical in the Covered  
4 Products after the Effective Date.

5 **5.1.2** Davia, on behalf of herself, her past and current agents, representatives, attorneys,  
6 successors, and/or assignees, and in the interest of the general public, hereby waives, with respect to  
7 Covered Products manufactured, distributed, sold and/or offered for sale by Old Dutch prior to the  
8 Effective Date, all rights to institute or participate in, directly or indirectly, any form of legal action  
9 against Defendant Releasees and releases Defendant Releasees from all claims for such alleged  
10 violations of Proposition 65 with respect to the Listed Chemical in the Covered Products as set forth  
11 in the 60-Day Notices of Violation identified in Section 1.5 of this Agreement.

12 **5.1.3** This Section 5.1 release shall not extend upstream to any entities that manufactured  
13 any Covered Product or any component parts thereof, or any distributors or suppliers who sold any  
14 Covered Products or any component parts thereof to Old Dutch.

15 **5.2** Settling Defendant's Release of Davia

16 **5.2.1** Settling Defendant and Defendant Releasees waive any and all claims against Davia,  
17 her attorneys, and other representatives for any and all actions taken or statements made (or those  
18 that could have been taken or made) by Davia and her attorneys and other representatives, whether  
19 in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in  
20 this matter, and/or with respect to the Covered Products.

21 **5.3** General Release - Each Party also provides, for the benefit of the other party and  
22 Defendant Releasees, a general release herein which shall be effective as a full and final accord and  
23 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,  
24 damages, losses, claims, liabilities and demands of any Party of any nature, character or kind, known  
25 or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Each Party  
26 acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as  
27 follows:

28 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE

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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.

Each Party expressly waives and relinquishes any and all rights and benefits that it may have under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the 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. COURT APPROVAL**

This Agreement is effective upon execution but must also be approved by the Court. Upon approval of this Agreement by the Court, Davia shall dismiss the remaining defendants in this Action with prejudice on the condition such remaining defendants agree to waive all fees and costs in exchange for such dismissal. If the Court does not approve this Agreement 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 amend and/or modify this Agreement in order to further the mutual intention of the Parties in entering into this Agreement. The Agreement shall become null and void if, for any reason, it is not approved and entered by the Court, as it is executed, within one year after it has been fully executed by all Parties.

**7. SEVERABILITY**

If, subsequent to court approval of this Agreement, any of the provisions of this Agreement is determined by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected if all parties so agree, 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.

1 **9. NOTICES**

2 When any Party is entitled to receive any notice under this Agreement, the notice shall be sent  
3 by FedEx (or other tracked mail carrier) or electronic mail to the following:

4 For Old Dutch International, Ltd.:

5 Benjamin M. Kan, CEO  
6 Old Dutch International, Ltd.  
7 421 N. Midland Ave  
8 Saddle Brook NJ 07663-5701

8 With copy to their counsel at:

9 Ann Grimaldi, Esq.  
10 Grimaldi Law Offices  
11 50 California St. #1500  
12 San Francisco, CA 94111  
13 [ann.grimaldi@grimaldilawoffices.com](mailto:ann.grimaldi@grimaldilawoffices.com)

12 For Davia to:

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

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

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

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

21 **11. MODIFICATION**

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

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

25 The Parties stipulate to judgment being entered upon this Settlement Agreement. The Parties  
26 further acknowledge and agree that, pursuant to Health & Safety Code §25249.7, a noticed motion is  
27 required to obtain judicial approval of this Agreement. In furtherance of obtaining such approval,  
28 Davia and Settling Defendant, and their respective counsel, agree to mutually employ their best

1 efforts to support the entry of this Agreement as a settlement agreement and obtain approval of the  
2 Agreement - sufficient to render an order approving this agreement - by the Court in a timely manner.  
3 Any effort by Settling Defendant to impede judicial approval of this Agreement shall subject such  
4 impeding party to liability for attorney fees and costs incurred by plaintiff or her counsel in their  
5 efforts to meet or oppose such Settling Defendant's impeding conduct. Settling Defendant's neutral  
6 position on matters raised by or during the court approval proceeding shall not be deemed to be  
7 impeding behavior under this section. Settling Defendant further agrees to accept service of Notice  
8 of Entry of any order approving the settlement, and any judgment, by electronic mail service to its  
9 counsel at the electronic mail address identified in Section 9.

10 **13. ENTIRE AGREEMENT**

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

20 **14. ATTORNEY'S FEES**

21 **14.1** Should Davia prevail on any motion, application for order to show cause or other  
22 proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable attorney  
23 fees and costs incurred as a result of such motion, order or application, if allowed under C.C.P.  
24 §1021.5. Should a Settling Defendant prevail on any motion, application for order to show cause or  
25 other proceeding to enforce a violation of this Consent Judgment, a Settling Defendant may be  
26 entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or  
27 application upon a finding that Davia's prosecution of the motion or application lacked substantial  
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1 justification. For purposes of this Agreement, the term substantial justification shall carry the same  
2 meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

3 **14.2** Except as specifically provided in the above paragraph and in Section 4.3, each Party  
4 shall bear its own costs and attorney's fees in connection with this action.

5 **14.3** Nothing in this Section 14 shall preclude a Party from seeking an award of sanctions  
6 pursuant to law.

7 **15. NEUTRAL CONSTRUCTION**

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

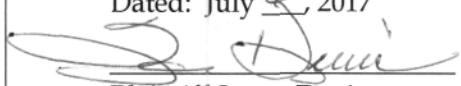
16 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

20 **17. AUTHORIZATION**

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

24 **IT IS SO AGREED.**

<p>25 Dated: July 6, 2017</p> <p>26 </p> <p>27 Plaintiff Susan Davia</p>	<p>Dated: July __, 2017</p> <p>Benjamin M. Kan, CEO Old Dutch International, Ltd.</p>
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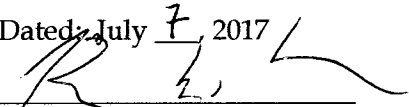
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23 this Agreement.

24 **IT IS SO AGREED.**

25 Dated: July __, 2017 26 _____ 27 Plaintiff Susan Davia	25 Dated: July 7, 2017 26  27 Benjamin M. Kan, CEO 28 Old Dutch International, Ltd.
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