

**PROPOSITION 65 SETTLEMENT AGREEMENT
SUSAN DAVIA AG NOTICE 2016-00221**

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“Agreement”) is entered into by and between Plaintiff Susan Davia, (“Davia” or “Plaintiff”) and Defendant Godinger Silver Art Co., Ltd (“Godinger”), with Godinger and Davia each referred to as a “Party” and collectively referred to as the “Parties.”

1.2 Plaintiff

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 Defendant

For purposes of this Agreement, Godinger represents that it employs 10 or more persons and 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”).

1.4 General Allegations

Davia alleges that Godinger manufactured, distributed and/or sold, in the State of California, certain types of mugs with brass handles comprised of or made with made with components that exposed users to Lead without first providing “clear and reasonable warning” under Proposition 65. Lead is listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical” or “Lead.”

1.5 Notice of Violation

On March 22, 2016, Davia represents that she served Godinger with a valid and compliant Proposition 65 60-Day Notice of Violation, together with a valid, requisite Certificate of Merit, that provided Godinger and public enforcers with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of the Lead in brass-handled mug products sold in California.

Godinger received the March 22, 2016, notice of violation (hereafter, “Notice”). Each Party represent that, as of the date it executes this Agreement, it believes that no public enforcer is

diligently prosecuting a Proposition 65 enforcement action related to the Listed Chemical in the covered products, as identified in the Notice.

1.6 No Admission

This Agreement resolves claims that are denied and disputed by Godinger. 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. Godinger denies the material factual and legal allegations contained in the Notice and Action, maintains that it did not knowingly or intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered Product and otherwise contends that all products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission against interest by Godinger 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 Godinger of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Godinger. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Godinger's obligations, responsibilities, and duties under this Agreement.

2. DEFINITIONS

2.1 The term "Covered Product" means any Godinger copper or other beverage mug product with brass handles including, but not limited to, 20 oz. copper Moscow Mule mug (19410).

2.2 The term "Effective Date" shall mean March 10, 2017.

2.3 The term "Lead Free" Covered Products shall mean Covered Products made with component materials that each contain less than 300 parts per million ("ppm") Lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized by Federal or State agencies for the purpose of determining Lead content in a solid substance.

3. NON-MONETARY RELIEF

3.1 Formulation Commitment

As a material term of this Agreement, Godinger represents that, promptly after receipt of the Notice, it began investigation into their vendor's material concentration compliance for Lead.

By July 2016, Godinger had commenced manufacture of Covered Products with a new vendor to ensure consistent manufacturing of Covered Products with compliant concentrations of Lead in Covered Product components. As of the execution of this Agreement, Godinger shall continue to provide all vendors of Covered Product the Lead Free concentration standards of Section 2.3 and instruct its vendors not to incorporate any raw or component materials into such product, especially brass and solder materials, that do not meet or exceed the Lead Free concentration standards of Section 2.3

3.1.1 After the execution of this Agreement, should Godinger arrange for the manufacture or other production of Covered Product with a new vendor, Godinger shall provide such vendor the Lead Free concentration standards of Section 2.3 and instruct its vendors not to incorporate any raw or component materials into such product, especially brass materials, that do not meet or exceed the Lead Free concentration standards of Section 2.3. For a period of three years following the Effective Date, Godinger shall maintain copies of all testing it obtains of new vendor Covered Products demonstrating compliance with this Section 3, shall maintain copies of material vendor correspondence relating to the Lead Free standards and shall produce such copies to Davia within thirty (30) days of receipt of written request from Davia.

3.1.2 After the Effective Date, Godinger 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 Lead Free. For every Lead Free Covered Product Godinger manufactures, causes to be manufactured, orders, causes to be ordered or otherwise sells after the execution of this Agreement, for a period of three years following the Effective Date, Godinger shall maintain copies of all testing of such products demonstrating compliance with this section, and shall provide copies of any such testing to Davia within thirty (30) days of receipt of written request. Davia agrees that such requests shall be reasonable, and will not be made more than once in 2017, and once annually thereafter, absent good cause.

3.2 Previously Obtained or Distributed Covered Products.

3.2.1 Godinger represents as a material term of this Agreement that all its old inventory of Covered Products not made Lead Free by its new vendor was exhausted by September 30, 2016 and that all Covered Products distributed by Godinger since that date and currently meet the Lead

Free standard. As such, conditioned upon the accuracy of this representation, Godinger shall have no obligation to implement interim Covered Product customer or product warning efforts.

Should Godinger discover any inventory of Covered Products that is not Lead Free, then Godinger shall not sell or ship such Covered Product to a California retailer, or sell or ship any such Covered Product to a vendor or retailer that Godinger reasonably understands maintains retail outlets in California, unless such Covered Product is labeled with the following clear and reasonable warning:

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

Any such warning label 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 label 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.

4. MONETARY PAYMENTS

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

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

4.2 Augmentation of Penalty Payments

For purposes of the penalty assessment under this Agreement, plaintiff is relying entirely upon defendant and its counsel for accurate, good faith reporting to plaintiff of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, plaintiff discovers and presents to Godinger evidence that any type of Covered Product has been distributed by Godinger in sales volumes materially different than those identified by such Godinger prior to execution of this Agreement, then such misrepresenting Godinger shall be liable for an additional penalty amount of up to \$10,000 for Covered Product sold prior to execution of this Agreement but not identified by such defendant to plaintiff. Godinger shall also be liable for

any reasonable, additional attorney fees expended by plaintiff in discovering applicable additional retailers or sales for such defendant, up to a maximum of \$10,000.

Plaintiff agrees to provide Godinger with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Godinger shall have thirty (30) days to agree to the amount of fees and penalties owing (subject to the above caps in any event) and submit such payment to plaintiff in accordance with the method of payment of penalties and fees identified in Sections 4.4 and 4.5. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, plaintiff shall be entitled to file a formal legal claim for civil penalties pursuant to this section and shall be entitled to all reasonable attorney fees and costs relating to such claim.

4.3 Reimbursement of Plaintiff's Fees and Costs

The Parties acknowledge that Davia and her counsel offered to resolve this dispute without 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. Godinger 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, Godinger shall pay the amount of \$24,500 for fees and costs incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and executing this Agreement in the public interest.

4.4 Payment Timing

Godinger shall deliver all settlement payment checks or funds required by Sections 4.1 and 4.3 of this Agreement to plaintiff within ten (10) business days of the date that this Agreement is fully executed by the Parties. Godinger shall deliver the settlement payments or checks to plaintiff's counsel as follows:

1. a civil penalty check in the amount of \$10,500 payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2016-00221");

2. a civil penalty check in the amount of \$3,500 payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2016-00221"); and
3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the amount of \$24,500 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2016-00221")

Godinger shall deliver all payments required by Sections 4.2 of this Agreement to Davia and the Sheffer Law firm in the amounts and on the date agreed to by counsel under Section 4.2 or as ordered by the Court.

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

Godinger 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.

5. CLAIMS COVERED AND RELEASE

5.1 Davia's Releases of Godinger

5.1.1 Plaintiff, on behalf of herself, her attorneys, successors, and/or assignees releases Godinger and each of its attorneys, successors, licensors and assigns, as well as its distributors and retailers (including Bed Bath & Beyond) ("Defendant Releasees") from any and all claims for violation of Proposition 65 that have or could have been asserted against Defendant Releasees regarding the failure to warn about exposure to any Listed Chemical arising in connection with any Covered Product distributed or otherwise sold by Godinger prior to the Effective Date. Godinger's compliance with this Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products as set forth in the Notice.

5.2 Godinger's Release of Davia

5.2.1 On behalf of itself and its Defendant Releasees, Defendant waives any and all claims against Davia, 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 or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Covered Products.

5.3 General Release

5.3.1 Each Party also provides, for the benefit of the other Party and Defendant Releasees, 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 any Party of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of distribution of the Covered Products prior to the Effective Date. Each Party 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.

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. SEVERABILITY

If, subsequent to execution 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.

7. GOVERNING LAW

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

purposes of this Agreement only, the Parties also stipulate that that venue is proper in County of Marin, and that the Marin County Superior Court has jurisdiction to enter and enforce the provisions of this Agreement as if it were entered pursuant to C.C.P. §664.6.

8. NOTICES

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

For Godinger Corporation:

Chaim Lefkowitz, EVP
Godinger Silver Art Co., Ltd.
6315 Traffic Avenue
Ridgewood, NY 11385

With copy to their counsel at:

Robert L. Falk, Esq.
Morrison & Foerster, LLP
425 Market Street, 32nd Floor
San Francisco, CA 94105-2482
Email: rfalk@mofa.com

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.

9. 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).

10. MODIFICATION

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

11. ENTIRE AGREEMENT

This Settlement 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.

12. ATTORNEY'S FEES

12.1 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, if allowed under C.C.P. §1021.5. Should a Godinger prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Consent Judgment, a Godinger 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.

12.2 Except as specifically provided in the above paragraph and in Section 4.3, each Party shall bear its own costs and attorney's fees in connection with this action. However, nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

13. NEUTRAL CONSTRUCTION

All 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.


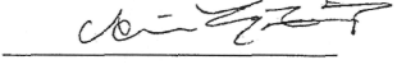
14. COUNTERPARTS, FACSIMILE SIGNATURES

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.

15. 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: March <u>9</u>, 2017</p> <p> Plaintiff Susan Davia</p>	<p>Dated: March <u>8</u>, 2017</p> <p> Chaim Lefkowitz, Executive Vice President Godinger Silver Art Co., Ltd.</p>
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