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Attorneys for Plaintiff
SUSAN DAVIA

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

SUSAN DAVIA,
Plaintiff,
v.
WILLIAMS-SONOMA, INC., and DOES 1-150
Defendants.

Case No. CIV1802994

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent to Judgment (“Consent Judgment” or “Agreement”) is entered into by and
4 between plaintiff Susan Davia, (“Davia” or “Plaintiff”) and defendant Williams-Sonoma, Inc.
5 (“Defendant” or “Williams-Sonoma”), with Williams-Sonoma and Davia each referred to as a
6 “Party” and collectively 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 only, Williams-Sonoma represents that it employs 10 or
13 more persons and is a person in the course of doing business for purposes of the Safe Drinking
14 Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.*
15 (“Proposition 65”).

16 **1.4 General Allegations**

17 Davia alleges that Defendant manufactured, distributed and/or sold in the State of
18 California certain cookware, barware, kitchenware, tableware, pitchers and trays with handles or
19 other components made with brass that exposed users to Lead without first providing a “clear and
20 reasonable warning” under Proposition 65. Lead is a listed chemical under Proposition 65 and is
21 referred to hereafter as the “Listed Chemical” or “Lead.”

22 **1.5 Notice of Violation**

23 On March 22, 2016, Davia represents that she served Williams-Sonoma with a valid and
24 compliant Proposition 65 60-Day Notice of Violation, together with a valid, requisite Certificate of
25 Merit, that provided Williams-Sonoma and public enforcers with notice of alleged violations of
26 Health & Safety Code § 25249.6 for failing to warn consumers of the alleged presence of the Listed
27 Chemical in cookware, barware, kitchenware, tableware, pitchers and trays with handles or other
28 components made with brass sold in California. Williams-Sonoma received the March 22, 2016,

1 notice of violation (hereafter "Notice"). Each Party represents that, as of the date it executes this
2 Consent Judgment, it understands that no public enforcer is diligently prosecuting a Proposition 65
3 enforcement action related to the Notice.

4 **1.6 Complaint**

5 On August 22, 2018, Davia, acting in the interest of the general public in California, filed a
6 Complaint (the "Complaint" or the "Action") in the Superior Court of the State of California for the
7 County of Marin, Case No. CIV1802994 alleging violations by Williams-Sonoma, and Does 1-150 of
8 Health & Safety Code § 25249.6 based, *inter alia*, on the alleged California consumer exposures to
9 the Listed Chemical contained in cookware, barware, kitchenware, tableware, pitchers and trays
10 with handles or other components made with brass (the "Covered Products").

11 **1.7 No Admission**

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

26 **1.8 Consent to Jurisdiction**

27 For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction
28 over Williams-Sonoma as to the obligations contained in the Agreement, that venue is proper in the

1 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
2 Consent Judgment. As an express part of this Agreement, pursuant to C.C.P. §664.6, the Court in
3 which this Consent Judgment is entered shall retain jurisdiction over the Parties to enforce this
4 Agreement until performance in full of the terms of the settlement.

5 **2. DEFINITIONS**

6 **2.1** The term “Private Label Covered Product” means any Covered Product Williams-
7 Sonoma, Pottery Barn or West Elm designs and manufactures through a third party vendor with
8 handles or other components made with brass. Private Label Covered Products include, but are not
9 limited to, West Elm Smooth Copper-finish Moscow Mule mug with solid brass handle, Pottery
10 Barn 15 oz. Moscow Mule mug with brass handle, Pottery Barn Copper Pitcher with brass handle,
11 Pottery Barn Copper Cocktail Shaker with brass handle on lid, Pottery Barn Copper Lidded Ice
12 Bucket with brass handle on lid, Pottery Barn Copper Tray with brass handles, Pottery Barn Copper
13 Drink Coasters with brass stand, Williams Sonoma Copper Round and Rectangular Tray with brass
14 handles, and Williams Sonoma Copper Ice Bucket with brass handles.

15 **2.2** The term “Exceptional Private Label Covered Product” means any Private Label
16 Covered Product that Williams-Sonoma discovers, after it has already taken ownership of such
17 product, does not meet the Lead Free standard of Section 2.4 despite William-Sonoma’s good faith
18 compliance with the formulation commitments of Section 3.1, and that Williams-Sonoma
19 determines is commercially impractical to return. For purposes of Exceptional Private Label
20 Covered Products, “commercially impractical” means the Covered Product is seasonal and cannot
21 be replaced with Lead Free Covered Product in a timely manner to meet seasonal needs or such
22 other circumstance as will result in commercial or competitive harm to Williams-Sonoma despite
23 good faith efforts to meet the Lead Free Standard.

24 **2.3** The term “Name Brand Covered Product” means any Covered Product except for
25 Private Label Covered Products. Name Brand Covered Products include, but are not limited to
26 Ruffoni Cookware and Mauvier Cookware.

27 **2.4** The term “Lead Free” shall mean made with component materials that each contain
28 less than 300 parts per million (“ppm”) lead when analyzed pursuant to EPA testing methodologies

1 3050B and 6010B, or equivalent methodologies utilized by Federal or State agencies for the purpose
2 of determining lead content in a solid substance.

3 **2.5** The term “California Store” shall mean any retail store, including Williams Sonoma,
4 Pottery Barn and West Elm, operated by Williams Sonoma Inc. in California

5 **2.6** The term “California Customer” shall mean any customer either making a purchase
6 in a California Store or providing a ship to address in California.

7 **2.7** The term “Effective Date” shall mean November 1, 2018.

8 **3. NON-MONETARY RELIEF**

9 **3.1 Formulation Commitment for Private Label Covered Product**

10 **3.1.1** As of the Effective Date, Williams-Sonoma shall provide its vendors of Private Label
11 Covered Products, that will be offered for sale in any California Store or to any California
12 Customer, the Lead Free concentration standards of Section 2.4 and instruct its vendors not to
13 incorporate any raw or component materials into such product, especially brass and solder
14 materials, that do not meet the Lead Free concentration standards of Section 2.4

15 **3.1.2** After the Effective Date, should Williams-Sonoma arrange with a new vendor for the
16 manufacture or other production of Private Label Covered Product for sale in any California Store
17 or to any California Customer, Williams-Sonoma shall provide such new vendor the Lead Free
18 concentration standards of Section 2.4, and instruct its new vendor not to incorporate any raw or
19 component materials into such product, especially brass materials, that do not meet the Lead Free
20 concentration standards of Section 2.4. Williams-Sonoma shall maintain copies of all testing it
21 obtains of new vendor Private Label Covered Products demonstrating compliance with this Section
22 3.1 for a period of two years. Williams-Sonoma shall maintain copies of vendor correspondence
23 relating to the Lead Free standards for a period of two years and shall produce such copies to Davia
24 within fifteen (15) days of receipt of reasonable written request from Davia. Davia agrees that such
25 requests shall be reasonable, and will not be made more than once in 2018, and once annually
26 thereafter, absent good cause. For purposes of this section, “new vendor” shall mean a vendor
27 from whom Williams-Sonoma was not purchasing or otherwise obtaining Private Label Covered
28 Products before the Effective Date.

1 **3.1.3** As of the Effective Date, Williams-Sonoma shall not sell any Private Label Covered
2 Product in any California Store or to any California Customer that is not Lead Free. For every Lead
3 Free Covered Product Williams-Sonoma sells in any California Store or to any California Customer
4 after the execution of this Agreement, Williams-Sonoma shall maintain copies of all testing of such
5 products for two years after obtaining such results demonstrating compliance with this section, and
6 shall provide copies of any such testing to Davia within fifteen (15) days of receipt of Davia's
7 reasonable written request. Davia agrees that such requests shall be reasonable, and will not be
8 made more than once in 2018, and once annually thereafter, absent good cause.

9 **3.1.4** As of the Effective Date, Williams-Sonoma shall not sell any Exceptional Private
10 Label Covered Product in a California Store or to a California Customer unless such product is
11 labelled with a warning as set forth in Sections 3.3.1 through 3.3.4.

12 **3.2 Formulation Commitment for Name Brand Covered Product**

13 **3.2.1** No later than the Effective Date, Williams-Sonoma shall contact any vendor of Name
14 Brand Covered Product that is or will be offered for sale in any California Store or to any California
15 Customer and request each such vendor supply William-Sonoma with Name Brand Covered
16 Product that meets the Lead Free concentration standards of Section 2.4. No later than the Effective
17 Date, Williams-Sonoma shall require each vendor of Name Brand Covered Products to provide
18 Williams-Sonoma, along with each new shipment of Name Brand Covered Product, with lead
19 content testing results for each metal component of a batch of exemplar product, demonstrating
20 whether each such Named Brand Product meets the Lead Free standards of Section 2.4, and/or
21 other written assurance of whether the Name Brand Covered Product meets the Lead Free
22 Standard. Williams-Sonoma shall maintain copies of Name Brand Covered Product vendor
23 correspondence relating to the Lead Free standards for a period of two years and shall produce
24 such copies to Davia within fifteen (15) days of receipt of reasonable written request from Davia.
25 Davia agrees that such requests shall be reasonable, and will not be made more than once in 2018,
26 and once annually thereafter, absent good cause.

27 **3.2.2** After the Effective Date, should Williams-Sonoma arrange with a new vendor for the
28 purchase or other acquisition of Name Brand Covered Product for sale in any California Store or to

1 any California Customer, Williams-Sonoma shall provide such new vendor the Lead Free
2 concentration standards of Section 2.4 and request that such vendor supply William-Sonoma with
3 Name Brand Covered Product that meets the Lead Free concentration standards of Section 2.4.
4 Williams-Sonoma shall require each new vendor of Name Brand Covered Products to provide
5 Williams-Sonoma, along with each new shipment of Name Brand Covered Product, with lead
6 content testing results for each metal component of a batch exemplar product, demonstrating
7 whether each such Named Brand Product meets the Lead Free standards of Section 2.4, and/or
8 other written assurance of whether the Name Brand Covered Product meets the Lead Free
9 standard. Williams-Sonoma shall maintain copies of Name Brand Covered Product vendor
10 correspondence relating to the Lead Free standards for a period of two years and shall produce
11 such copies to Davia within fifteen (15) days of receipt of reasonable written request from Davia.
12 Davia agrees that such requests shall be reasonable, and will not be made more than once in 2018,
13 and once annually thereafter, absent good cause. For purposes of this section, "new vendor" shall
14 mean a vendor from whom Williams-Sonoma was not purchasing or otherwise obtaining Name
15 Brand Covered Product before the Effective Date.

16 **3.2.3** As of the Effective Date, Williams-Sonoma shall not sell any Name Brand Covered
17 Product that is not Lead Free in any California Store or to any California Customer unless such
18 product is sold with a warning pursuant to Sections 3.3.1 through 3.3.4.

19 **3.3 Covered Product Warning Requirements**

20 **3.3.1** Williams Sonoma represents as a material term of this Agreement that as of the
21 Effective Date all old inventory of Private Label or Name Brand Covered Products obtained prior to
22 the Effective Date distributed or sold by Williams-Sonoma in a California Store or to a California
23 Customer are being sold with a warning compliant with Section 3.3.2 or meet the Lead Free
24 standard. Should Williams-Sonoma discover any inventory of Private Label or Name Brand
25 Covered Products obtained prior to the Effective Date being offered for sale in a California Store or
26 to a California Customer that is not Lead Free, then Williams-Sonoma shall not sell such Covered
27 Product from any California Store or to any California Customer unless such Covered Product is
28 sold with the warning set forth in Sections 3.3.2 through 3.3.4, below.

1 **3.3.2 California Store Product Warning**

2 For Name Brand Covered Products obtained by Defendant after the Effective Date that do
3 not meet the Lead Free standard of Section 2.4, and for any Exceptional Private Label Covered
4 Products, such Covered Products may only be sold by Defendant in a California Store with one of
5 the following Proposition 65 warnings:

6 **⚠ [California Proposition 65] WARNING:** This product
7 can expose you to chemicals including
8 Lead, which are known to the State of
9 California to cause [cancer and] birth
 defects or other reproductive harm.

10 Or, only for Covered Products to which a warning label has been applied to the product, the
11 product label, or its immediate packaging before August 30, 2018,

12 **⚠ [California Proposition 65] WARNING:** This product
13 contains Lead, a chemical known to the
14 State of California to cause [cancer and]
 birth defects or other reproductive harm.

15 Or, only for any Covered Products with the warning statement contained on the product,
16 the product label, or the immediate packaging of the Covered Product itself,

17 **⚠ [California Proposition 65] WARNING:** Cancer and
18 Reproductive Harm - www.P65Warnings.ca.gov.

19 This last warning shall hereafter be referred to as the “Short Form Warning.” Language in brackets
20 is optional. Any warning for Exceptional Private Label Covered Products may be provided on the
21 product labeling, immediate packaging or directly on the product itself. Any warning for Name
22 Brand Covered Product may be provided by retail signage (at each display location of any Name
23 Brand Covered Product), or on the product labeling, immediate packaging, or directly on the
24 product itself.

25 For Name Brand Covered Product, Williams-Sonoma may use either the warnings required
26 by this Consent Judgment or any retail warning signs or product label/package warnings provided
27 by the name brand vendor that contain warning language that otherwise complies with 27 Cal.
28 Code of Regs. Section 25603 (or future amended regulation under Proposition 65 governing the

1 content of safe harbor clear and reasonable warnings for consumer products). For retail signage for
2 Name Brand Covered Product, pursuant to 27 Cal. Code Regs. Section 25601(e), the warning sign
3 may, at Williams-Sonoma's option, refer to the specific brand, brands, and/or specific Name Brand
4 Products subject to the warning.

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

11 **3.3.3 Internet Website Warning**

12 For Name Brand Covered Products obtained by Defendant after the Effective Date that do
13 not meet the Lead Free standard of Section 2.4, or any Exceptional Private Label Covered Product,
14 such product may only be sold by Defendant through an ecommerce website controlled by
15 Defendant with a Proposition 65 warning. The warning for such Covered Product must appear
16 either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web
17 page as the order form for a Covered Product; (c) on the same page as the price for any Covered
18 Product; or (d) on one or more web pages displayed to a purchaser during the checkout process.
19 The warning may also be provided by a clearly marked hyperlink labeled "[California Proposition
20 65] Warning" on the product display page prior to purchase of the Covered Product (language in
21 brackets optional).

22 One of the following warning statements shall be used and shall be displayed with such
23 conspicuousness, as compared with other words, statements, designs, or devices on the webpages,
24 as to render it reasonably likely to be read and understood by an ordinary individual under
25 customary conditions of purchase. The warning shall be at least the size of the largest of any other
26 health or safety warnings on the webpage, and the word "warning" shall be in all capital letters and
27 in bold print.

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⚠ [California Proposition 65] 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.


Or, only before August 30, 2018,

⚠ [California Proposition 65] WARNING: This product contains Lead, a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm.


Or, only when the subject Covered Product being sold through an internet or ecommerce website also has a Section 3 warning on the product, the product label, or the immediate packaging of the Covered Product itself,

⚠ [California Proposition 65] WARNING: Cancer and Reproductive Harm - www.P65Warnings.ca.gov.


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

[California Proposition 65] WARNING: Products identified on this page with the following symbol  **WARNING** 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.

Or, only before August 30, 2018,


[California Proposition 65] WARNING: Products identified on this page with the following symbol  **WARNING** contain Lead, a chemical known to the State of California to cause [cancer and] birth defects or other reproductive harm.

1 Or, only when the subject Covered Product being offered for sale in a catalog has a Short
2 Form Warning on the product, the product label, or the immediate packaging of the Covered
3 Product itself, the following warning statement may be utilized on the internet site display,


4 **[California Proposition 65] WARNING:** Products
5 identified on this page with the following
6 symbol  **WARNING** are subject to the
7 following warning: Cancer and Reproductive
8 Harm - www.P65Warnings.ca.gov

9 **3.3.4 Catalog Warning**

10 Where California Customers can purchase Covered Products from a mail order catalog, for
11 all such catalogs printed by or for Defendant more than six (6) months after the Effective Date that
12 offer for sale any Name Brand Covered Product that does not meet the Lead Free standards of
13 Section 2.4, or any Exceptional Private Label Covered Product, the identification of the Covered
14 Product in the catalog shall be accompanied by a Proposition 65 warning. The Proposition 65
15 warning provided in such catalog shall be displayed with such conspicuousness, as compared with
16 other words, statements, designs, or devices in the catalog, as to render it reasonably likely to be
17 read and understood by an ordinary individual under customary conditions of purchase. The
18 warning shall be at least the size of the largest of any other health or safety warnings for the
19 Covered Product, and the word “warning” shall be in all capital letters and in bold print. One of
20 the following warnings shall be provided on the same page and in the same location as the display
21 and/or description of the Covered Product:

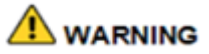
22  **[California Proposition 65] WARNING:** This product
23 can expose you to chemicals including
24 Lead, which are known to the State of
California to cause [cancer and] birth
defects or other reproductive harm.

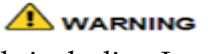
25 Or, only for catalogs designed and printed before August 30, 2018,

26  **[California Proposition 65] WARNING:** This product
27 contains Lead, a chemical known to the
28 State of California to cause [cancer and]
birth defects or other reproductive harm.

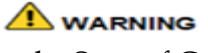
1 Or, only when the subject Covered Product being offered for sale in a catalog has a Section 3
2 warning statement on the product, the product label, or the immediate packaging of the Covered
3 Product itself, this same statement may be utilized in the catalog,

4  **[California Proposition 65] WARNING:** Cancer and
5 Reproductive Harm - www.P65Warnings.ca.gov.

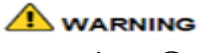
6 Alternatively, the designated symbol  may appear adjacent to or immediately
7 following the display, description, or price of the Covered Product for which a warning is being
8 given, provided that the following warning statement also appears elsewhere in the catalog, as
9 follows:
10

11 **[California Proposition 65] WARNING:** Products
12 identified on this page with the following
13 symbol  can expose you to
14 chemicals including Lead, which are known to
the State of California to cause [cancer and]
15 birth defects or other reproductive harm.

15 Or, only for catalogs designed and printed before August 30, 2018,

16 **[California Proposition 65] WARNING:** Products
17 identified on this page with the following
18 symbol  contain chemicals
19 known to the State of California to cause
[cancer and] birth defects or other reproductive
20 harm.

21 Or, only when the subject Covered Product being offered for sale in a catalog has a Short
22 Form Warning on the product, the product label, or the immediate packaging of the Covered
23 Product itself, the following warning statement may be utilized in the catalog,

24 **[California Proposition 65] WARNING:** Products
25 identified on this page with the following
26 symbol  are subject to the
27 following warning: Cancer and Reproductive
28 Harm - www.P65Warnings.ca.gov

1 The designated symbol must appear on the same page and in close proximity to the display
2 and/or description of the Covered Product. On each page where the designated symbol appears,
3 there must be a header or footer directing the consumer to the warning language and definition of
4 the designated symbol which may be on the inside front cover of the catalog, on the same page as
5 the price for the Covered product, or on the order form for the Covered Product.

6 If Defendant elects to provide warnings in any mail order catalog, then the warnings must
7 be included in all catalogs offering to sell one or more Covered Products in California. The
8 background of the yellow warning triangle above can be white if there is no yellow used in the area
9 of the catalogue where the warning is displayed. Language in brackets for any of the internet or
10 catalogue warnings above is optional. For catalogs that display Covered Products but from which a
11 customer may not order from the catalog but instead must purchase the product in some other
12 manner, warnings can be delivered by one of the other methods set forth in Section 3.

13 **4. MONETARY PAYMENT**

14 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

15 In settlement of all the claims referred to in the Notice, the Complaint, and this Consent
16 Judgment, Williams-Sonoma shall pay a total of \$4,000, in accordance with California Health &
17 Safety Code § 25249.12(c)(1) & (d), in complete resolution of any claim for civil penalties.

18 **4.2 Augmentation of Penalty Payments**

19 **4.2.1** For purposes of the penalty assessment under this Consent Judgment, Davia is
20 relying upon Williams-Sonoma and its counsel for accurate, good faith reporting to Davia of the
21 nature and amounts of relevant sales activity for Covered Products in California without a
22 Proposition 65 warning. If within nine (9) months of the Effective Date, Davia discovers and
23 presents to Defendant evidence that its California sales of Covered Products without a Proposition
24 65 warning materially exceeded the amount identified by Defendant prior to the execution of this
25 Consent Judgment, then Plaintiff may provide Defendant with a written demand for additional
26 penalties and attorney's fees consistent with the extent and nature of such evidence. In connection
27 with any such demand ("Demand") under this Section, Davia shall identify the: (1) alleged correct
28 amount of Defendant's California Covered Product sales without a warning; (2) California Covered

1 Product sales earlier reported by Defendant to Davia; and (3) the source or sources of the alleged
2 correct California sales information. The Parties shall have a period of 30 days to meet and confer
3 concerning such evidence, and Defendant shall have the opportunity to present to Plaintiff any
4 evidence to the contrary. If the Parties can agree on an appropriate disposition, then Defendant
5 shall submit payment of any agreed additional civil penalties and attorney's fees related to
6 plaintiff's further investigation of Defendant's California sales activity within 30 days of such
7 agreement in accordance with the method of payment of penalties and fees specified in Sections 4.1,
8 4.3 and 4.4. Plaintiff shall submit an application to the Court for approval of any agreed civil
9 penalty payment or attorney fee/cost reimbursement payment that exceeds \$12,000. If the Parties
10 cannot agree on an appropriate disposition within 30 days or any mutually agreed extension, Davia
11 shall be entitled to file a motion against Defendant seeking additional civil penalties pursuant to
12 this section according to proof. The prevailing party on any such motion shall be entitled to its
13 reasonable fees and costs incurred in prosecuting or defending such motion.

14 **4.2.2** It is the intent of the Parties to minimize William Sonoma's sale of Exceptional
15 Private Label Covered Products in California Stores or to California Customers. As such, Williams-
16 Sonoma shall pay an additional civil penalty for its decision to sell Exceptional Private Label
17 Covered Product subject to the terms below. If Davia discovers and presents to Williams-Sonoma
18 evidence that it is selling Exceptional Private Label Covered Products in a California Store or to a
19 California Customer, then Williams-Sonoma shall be liable for an additional civil penalty of \$5,000
20 for the first such occurrence in a calendar year, and shall be liable for an additional civil penalty of
21 \$10,000 for each separate occurrence in that same calendar year. For purposes of this section,
22 "separate occurrence" shall mean the sale of a different type of Exceptional Private Label Covered
23 Product or one with a different SKU or other product identification number. If, however, Williams-
24 Sonoma reports any sale of Exceptional Private Label Covered Product to Davia before Davia has
25 discovered such sale or presented evidence of it to Williams-Sonoma, then Williams-Sonoma shall
26 be liable for an additional civil penalty of \$2,000 for the first self-reported occurrence in a calendar
27 year, and shall be liable for an additional civil penalty of \$5,000 for each self-reported separate
28 occurrence in that same calendar year. It shall be a defense to any claim to additional monetary

1 payments under this section if Defendant reasonably relied on a test result showing the Exceptional
2 Private Label Covered Product meets the Lead Free Standard before offering the Exceptional
3 Private Label Covered Product for sale in California. Should Defendant produce such a test result,
4 from an accredited laboratory, on the same type of Exceptional Private Label Covered Product, to
5 Plaintiff, it shall not be liable for any monetary payments or subject to further enforcement
6 hereunder.

7 **4.3 Reimbursement of Plaintiff's Fees and Costs**

8 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
9 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
10 issue to be resolved after the material terms of this Agreement had been settled. Williams-Sonoma
11 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
12 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
13 Davia and her counsel under general contract principles and the private attorney general doctrine
14 codified at California Code of Civil Procedure section 1021.5, for all work of any kind performed in
15 this matter through the Court's entry of this Consent Judgment, including but not limited to all
16 attorney's fees, expenses, investigative and expert costs, except fees that may be incurred on appeal.
17 Under these legal principles, Williams-Sonoma shall pay the all inclusive amount of \$57,500 for fees
18 and expenses incurred investigating, litigating and enforcing this matter, including the fees and
19 expenses incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval
20 of this Consent Judgment in the public interest. Such payment shall be made payable to "Sheffer
21 Law Firm".

22 **4.4 Payment Timing**

23 Williams-Sonoma shall deliver all settlement payment checks or funds required by Sections
24 4.1 and 4.3 of this Agreement to its counsel to hold in trust within one week of the date that this
25 Agreement is fully executed by the Parties. Williams-Sonoma's counsel shall confirm receipt of
26 settlement funds in writing to plaintiff's counsel and, thereafter, hold the amounts paid in trust
27 until such time as the Court approves this settlement as contemplated by Section 7.

28 Within five business days of the date plaintiff provides electronic notice to counsel for

1 Williams-Sonoma that the Court has approved this settlement, Williams-Sonoma's counsel shall
2 deliver the settlement payments or checks to plaintiff's counsel as follows:

- 3 1. a civil penalty check in the amount of \$3,000 payable to "OEHHA" (EIN: 68-
4 0284486, Memo line "Prop 65 Penalties, 2016-00223");
- 5 2. a civil penalty check in the amount of \$1,000 payable to "Susan Davia" (Tax
6 ID to be supplied, Memo line "Prop 65 Penalties, 2016-00223"); and
- 7 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the
8 amount of \$57,500 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line
9 "2016-00223")

10 Williams-Sonoma shall deliver all payments required by Sections 4.2 of this Agreement (if
11 any) to the Sheffer Law firm in the amounts and on the date agreed to by counsel under Section 4.2
12 or as ordered by the Court. Plaintiff shall have the sole responsibility for delivering any required
13 settlement checks to OEHHA.

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

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

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

22 **4.5 Issuance of 1099 Forms**

23 After this Agreement has been executed and the settlement funds have been transmitted to
24 Davia's counsel, Williams-Sonoma or its counsel shall issue three separate 1099 forms, as follows,
25 for its settlement payments specified in its Exhibit A:

- 26 (a) The first 1099 shall be issued to the Office of Environmental Health Hazard
27 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount
28 paid pursuant to Sections 4.1 and 4.2 (if any);

1 (b) The second 1099 shall be issued to Davia in the amount paid pursuant to
2 Sections 4.1 and 4.2 (if any), whose address and tax identification number shall be
3 furnished upon request; and

4 (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in
5 the amount paid pursuant to Section 4.2 (if any) and Section 4.3. 3.

6 **5. CLAIMS COVERED AND RELEASED**

7 **5.1 Davia's Release of Williams-Sonoma**

8 **5.1.1** This Consent Judgment is a full, final and binding resolution between Davia, on
9 behalf of herself and in the public interest, and Williams-Sonoma, of all actual or alleged violations
10 of Proposition 65 asserted by Davia on behalf of herself, the public interest, and her representatives
11 and attorneys, against Williams-Sonoma, their directors, officers, employees, subsidiaries, affiliates,
12 and each entity to whom Williams-Sonoma directly or indirectly distributes or sells Covered
13 Products, including, but not limited to, retailers, downstream distributors, wholesalers, customers,
14 franchisees, cooperative members, affiliates, and licensees (collectively "Releasees"), based on their
15 failure to warn about alleged exposures to Listed Chemicals contained in Covered Products
16 manufactured, distributed, sold and/or offered for sale by Williams-Sonoma in California before
17 the Effective Date as detailed in the Notice and Complaint. Compliance with the terms of this
18 Consent Judgment constitutes compliance with Proposition 65 with respect to Covered Products
19 sold after the Effective Date.

20 **5.1.2** In further consideration of the promises and agreements herein contained, Davia, on
21 behalf of herself and her past and current representatives and attorneys, hereby waives all Davia's
22 rights to institute or participate in, directly or indirectly, any form of legal action, and releases all
23 claims that Davia may have against the Releasees, including, without limitation, all actions, and
24 causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
25 penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees, and
26 attorneys' fees, but exclusive of fees and costs on appeal -- arising under Proposition 65 with
27 respect to Listed Chemicals in Covered Products manufactured, distributed, sold and/or offered
28 for sale by Williams-Sonoma before the Effective Date.

1 **5.1.3** Davia also, in her individual capacity, on behalf of herself and her past and current
2 representatives and attorneys, provides a general release herein, which shall be effective as a full
3 and final accord and satisfaction, and operate as a bar to all actions, causes of action, obligations,
4 costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Davia, of any
5 nature, character or kind, known or unknown, suspected or unsuspected, arising out of Covered
6 Products manufactured, distributed or sold by Williams-Sonoma or Releasees prior to the Effective
7 Date. Davia acknowledges that she is familiar with Section 1542 of the California Civil Code, which
8 provides as follows:

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

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

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

24 **5.2 Williams-Sonoma's Release of Davia**

25 Williams-Sonoma, on behalf of itself, its past and current agents, representatives, attorneys,
26 successors, and/or assignees, hereby waives any and all claims against Davia and her attorneys and
27 other representatives, for any and all actions taken or statements made (or those that could have
28 been taken or made) by Davia and her attorneys and other representatives, whether in the course of

1 investigating claims, otherwise seeking to enforce Proposition 65 against them in this matter, or
2 with respect to Covered Products. Williams-Sonoma acknowledges that it is familiar with Section
3 1542 of the California Civil Code, which provides as follows:

4
5 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
6 CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER
7 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
8 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
9 SETTLEMENT WITH THE DEBTOR.

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

17
18 **6. COURT APPROVAL**

19 This Agreement is effective upon execution but must also be approved by the Court. If the
20 Court does not approve this Agreement in its entirety, the Parties shall meet and confer to
21 determine whether to modify the terms of the Agreement and to resubmit it for approval. In
22 meeting and conferring, the Parties agree to negotiate in good faith in an effort to reach agreement
23 on any actions reasonably necessary to amend and/or modify this Agreement in order to further
24 the mutual intention of the Parties in entering into this Agreement. The Agreement shall become
25 null and void if, for any reason, it is not approved and entered by the Court, as it is executed,
26 within one year after it has been fully executed by all Parties. The Parties agree that, upon Court
27 approval, a Court judgment shall be entered on the terms of this Agreement.

28
7. SEVERABILITY

If, subsequent to court approval of this Agreement, any of the provisions of this Agreement
are 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

1 provision is not severable from the remainder of the Agreement.

2 **8. GOVERNING LAW**

3 The terms of this Agreement shall be governed by the laws of the State of California.
4 Should Proposition 65 be repealed or otherwise rendered inapplicable by reason of law generally or
5 as to the Covered Products, then Defendant may notify plaintiff in writing, and if plaintiff does not
6 agree, move this Marin County Superior Court, after proper notice to Davia, for a finding and order
7 that Defendant shall have no further obligations pursuant to this Agreement or that certain
8 obligations should be eliminated or modified to become consistent with current law. The
9 prevailing party on any such motion shall be entitled to its reasonable attorney's fees and costs
10 incurred in prosecuting or defending such motion.

11 **9. NOTICES**

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

14 For Williams-Sonoma Corporation:

15 General Counsel
16 Williams Sonoma, Inc.
17 3250 Van Ness Avenue
18 San Francisco, CA 94109

18 With copy to their counsel at:

19 J. Robert Maxwell
20 Rogers Joseph O'Donnell PLC
21 311 California Street, 10th Fl.
22 San Francisco, CA 94104
23 jmaxwell@rjo.com

22 For Davia to:

23 Proposition 65 Coordinator
24 Sheffer Law Firm
25 81 Throckmorton Ave., Suite 202
26 Mill Valley, CA 94941

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

1 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

4 **11. MODIFICATION**

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

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

8 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
9 is required to obtain judicial approval of this Agreement, which motion plaintiff shall prepare and
10 file. In furtherance of obtaining court approval, Davia and Williams-Sonoma, and their respective
11 counsel, agree to mutually employ their best efforts to support the entry of this Agreement as a
12 Consent Judgment and obtain approval of the Agreement by the Court in a timely manner.

13 Williams-Sonoma agrees to accept service of any notice of entry of order approving this
14 Agreement or entering judgment on this claim by electronic mail delivery.

15 **13. ENTIRE AGREEMENT**

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

25 **14. ATTORNEY'S FEES**

26 **14.1** Should Davia prevail on any motion, application for order to show cause or other
27 proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable
28 attorney fees and costs incurred as a result of such motion, order or application, if allowed under

1 C.C.P. §1021.5. Should Williams-Sonoma prevail on any motion, application for order to show
2 cause, or other proceeding to enforce a violation of this Consent Judgment, Williams-Sonoma shall
3 be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or
4 application upon a finding that Davia's prosecution or defense of the motion or application lacked
5 substantial justification. For purposes of this Agreement, the term substantial justification shall
6 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016,
7 et seq. Except as otherwise provided in Section 4.2, before either Party brings any motion to enforce
8 this Agreement for an alleged breach, that Party shall provide the other with written notice of any
9 alleged breach, and the Parties shall thereafter meet and confer for a period of 30 days to see if the
10 matter can be resolved. After such 30 day period or any mutually agreed extension, if the matter
11 cannot be resolved, the Party providing notice of the alleged breach shall be free to file a motion to
12 enforce hereunder.

13 **14.2** Except as specifically otherwise provided for in this Agreement, each Party shall
14 bear its own costs and attorney's fees in connection with the Notice, this Action, and this Consent
15 Judgment.

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

18 **15. NEUTRAL CONSTRUCTION**

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

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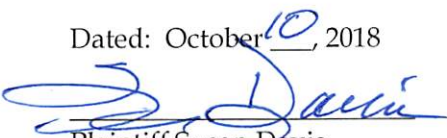
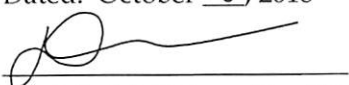
16. COUNTERPARTS, FACSIMILE SIGNATURES

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 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: October ¹⁰, 2018</p>  <p>Plaintiff Susan Davia</p>	<p>Dated: October <u>9</u>, 2018</p>  <p>Danielle M. Hohos, Vice President, Deputy General Counsel, Williams Sonoma, Inc.</p>
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