

1 Gregory M. Sheffer, State Bar No. 173124
2 SHEFFER LAW FIRM
3 81 Throckmorton Ave., Suite 202
4 Mill Valley, CA 94941
5 Telephone: 415.388.0911
6 Facsimile: 415.388.9911

7 Attorneys for Plaintiff
8 SUSAN DAVIA

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

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 DOWNLITE INTERNATIONAL, INC.,
16 MACY'S MERCHANDISING GROUP, INC.,
17 MACY'S WEST STORES, INC. AND MACY'S
18 INC. and DOES 1-150,

19 Defendants.

Case No. CIV 1703418

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

Action Filed: September 15, 2017
Trial Date: None Assigned

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1. INTRODUCTION

1.1 The Parties

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Susan Davia, (“Davia”), on the one hand, and Downlite International, Inc. (“Downlite” or “Defendant”), on the other hand, with Davia and Downlite each referred to as a “Party” and collectively referred to as the “Parties.”

1.2 Davia

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

1.3 Downlite

Downlite is alleged to have been responsible for the manufacture and distribution of the products subject to this Agreement. Downlite 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 Downlite participated in the manufacture, distribution and/or sale, in the State of California, of PVC bedding product display and storage cases made with materials that exposed users to DEHP without first providing “clear and reasonable warning” under Proposition 65. DEHP is listed as a carcinogen and reproductive toxin pursuant to Proposition 65. DEHP shall be referred to hereinafter as the “Listed Chemical”.

1.5 Notices of Violation

On August 25, 2016, Davia served Downlite and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP, a toxic chemical found in the Covered Products sold in

1 California (AG Notice 2016-00935). The August 25, 2016, 60-Day Notice of Violation shall be
2 referred to herein as "Notice."

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

6 **1.6 Complaint**

7 On September 15, 2017, Davia, acting in the interest of the general public in California, filed
8 a Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV
9 1703418 alleging violations by Downlite International, Inc., Macy's Merchandising Group, Inc.,
10 Macy's West Stores, Inc., Macy's Inc. and Does 1-150 of Health & Safety Code § 25249.6 based, *inter*
11 *alia*, on the alleged exposures to DEHP contained in certain vinyl bedding storage/packaging case
12 products (hereafter "Complaint" or "Action").

13 **1.7 No Admission**

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

27 ///
28

1 **1.8** Consent to Jurisdiction

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

9 **2.** DEFINITIONS

10 **2.1** The term "Product" or "Covered Product" shall mean all vinyl/PVC bedding and
11 bedding accessory product packaging/storage cases made or manufactured by or for Downlite,
12 including, but not limited to, those cases for Hotel Collection Down Pillow (all sizes and styles) and
13 Martha Stewart Dream Comfort Comforter (all sizes and weights).

14 **2.2** The term "Phthalate Free" Covered Products shall mean that each component of
15 each Covered Product contains less than or equal to 1,000 parts per million ("ppm") of di(2-
16 ethylhexyl phthalate) ("DEHP"), dibutyl phthalate ("DBP"), diisononyl phthalate ("DINP"),
17 diisodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP") and butyl benzyl phthalate ("BBP")
18 as determined test results using Environmental Protection Agency ("EPA") testing methodologies
19 3580A and 8270C.

20 **2.3** "Effective Date" shall mean September 1, 2017.

21 **3.** INJUNCTIVE-TYPE RELIEF

22 **3.1** Product Reformulation Commitment

23 **3.1.1** No later than the Effective Date, Downlite shall provide the Phthalate Free phthalate
24 concentration standards of Section 2.2 to its then-current vendors of any Covered Product and
25 instruct such entities not to incorporate any raw or component materials that do not meet the
26 Phthalate Free concentration standards of Section 2.2 into any Covered Product. Downlite shall
27 maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards
28 for two (2) years after the Effective Date and shall produce such copies to Davia within fifteen (15)

1 days of receipt of reasonable request made in writing from Davia, as long as such request is made
2 within two (2) years after the Effective Date.

3 **3.1.2** After the Effective Date, Downlite shall provide the Phthalate Free phthalate
4 concentration standards of Section 2.2 to any New Vendors of any Covered Product and instruct
5 such entities not to incorporate any raw or component materials that do not meet the Phthalate Free
6 concentration standards of Section 2.2 into any Covered Product. "New Vendors" means vendors
7 of Covered Products from whom Downlite was not obtaining Covered Products as of the Effective
8 Date. As of January 2018, prior to purchase and acquisition of any Covered Product from any New
9 Vendor, Downlite shall require and obtain a written confirmation and accompanying laboratory
10 test result from the New Vendor demonstrating compliance with the Phthalate Free phthalate
11 concentration standard for each production lot of vinyl comprising the Covered Product. For two
12 (2) years after the Effective Date, for each product lot of vinyl comprising the Covered Products
13 Downlite manufactures, causes to be manufactured, orders, causes to be ordered or otherwise
14 obtains from a New Vendor after January 2018, Downlite shall maintain copies of all testing of such
15 products demonstrating compliance with this section, shall maintain copies of all vendor
16 correspondence relating to the Phthalate Free concentration standards and shall produce such
17 copies to Davia within fifteen (15) days of receipt of reasonable request made in writing from Davia
18 as long as such request is made within two (2) years after the Effective Date.


19 **3.1.3** As of the Effective Date, Downlite shall not manufacture or cause to be
20 manufactured, order or cause to be ordered, any Covered Product that is not Phthalate Free. For
21 every Covered Product Downlite manufactures, causes to be manufactured, orders, causes to be
22 ordered or otherwise sells after the Effective Date, Downlite shall maintain copies of all testing of
23 such products demonstrating compliance with this section, shall maintain copies of all vendor
24 correspondence relating to the Phthalate Free concentration standards of Section 2.2 and shall
25 produce such copies to Davia within fifteen (15) days of receipt of reasonable request made in
26 writing from Davia, as long as such request is made within two (2) years after the Effective Date

27 **3.2** Previously Distributed Covered Products.
28


1 Customer Notification - No later than January 31, 2018, Downlite shall send a letter, electronic or
2 otherwise ("Notification Letter") to: (1) each retailer or distributor in California to which it, after
3 January 1, 2016, supplied any Covered Product; (2) any other retailer or distributor in California that
4 Downlite reasonably understands or believes has any inventory of Covered Products; and (3) any
5 other retailer or customer that Downlite reasonably understands or believes has any inventory of
6 Covered Products and maintains any retail outlet for the sale of Covered Products in California. The
7 Notification Letter shall advise the recipient that Covered Products contain DEHP, a chemical
8 known to the State of California to cause cancer and birth defects or other reproductive harm. The
9 Notification letter shall direct recipient that all Covered Product must be labelled with a clear and
10 reasonable Proposition 65 warning before it is sold in the California market or to a California
11 customer. The Notification Letter shall include a sheet of white background¹, adhesive Proposition
12 65 Warning stickers with the following warning in no less than Book Antiqua, point 9 font (or its
13 equivalent), one of the following warning statements:

14
15 **WARNING:** This packaging contains DEHP, a chemical known
16 to the State of California to cause cancer and birth
17 defects or other reproductive harm. *This packaging*
 is not intended as a storage container. Please discard
 packaging after purchase;

18 or

19
20  **WARNING** The vinyl packaging for this product can expose
21 you to chemicals, including DEHP, that are known
22 to the State of California to cause cancer and birth
 defects or other reproductive harm. For more
 information go to www.P65Warnings.ca.gov;

23 or

24  **WARNING** for vinyl packaging for this product - Cancer and
25 Reproductive Harm - www.P65Warnings.ca.gov

26
27
28 ¹ Downlite may use *existing* clear warning labels until depletion and then must switch to white background warning labels.

1 The Notification Letter shall be sent with return receipt requested. The Notification Letter shall
2 request written confirmation from the recipient, within 15 days of receipt, that all such inventory for
3 California sale has been, or will be, labelled with the warning language identified in this section.

4 **3.2.1** Downlite shall maintain records of compliance correspondence, inventory reports or
5 other communication confirming compliance with § 3.2.1 for three (3) years from the Effective Date
6 and shall produce copies of such records upon written request by Davia.

7 **3.3 Existing Inventory Product Packaging Labels**

8 For any inventory of Covered Products obtained by Downlite prior to the Effective Date,
9 Downlite shall not sell or ship any of such Covered Product that is not Phthalate Free to a California
10 customer or retailer, or sell or ship any Covered Product that is not Phthalate Free to a customer or
11 retailer that Downlite has reason to know maintains retail outlets in the California, unless such
12 Covered Products shipped with product package label set forth hereafter.

13 Each such label utilized by Downlite for any Covered Product shall be prominently placed
14 either on the front, exterior surface of the clear packaging or where other health and safety warnings
15 are located, with such conspicuousness as compared with other words, statements, designs, or
16 devices as to render it likely to be read and understood by an ordinary individual under customary
17 conditions *before* purchase or use.

18 **3.3.1 Covered Product Label.**

19 For all non-Phthalate Free Covered Product sold into, California, to a California customer or
20 to any entity that Downlite has reason to know either maintains retail outlets in California or is a
21 distributor for any entity that maintains retail outlets in California, Downlite shall affix a label to the
22 Covered Product that provides one of the following warning statements:

23 **WARNING:** This packaging contains DEHP, a chemical known
24 to the State of California to cause cancer and birth
25 defects or other reproductive harm. *This packaging*
26 *is not intended as a storage container. Please discard*
packaging after purchase;

27 or

28  **WARNING**

1 The vinyl packaging for this product can expose
2 you to chemicals, including DEHP, that are known
3 to the State of California to cause cancer and birth
4 defects or other reproductive harm. For more
5 information go to www.P65Warnings.ca.gov;

6 or



WARNING

7 for vinyl packaging for this product -- Cancer and
8 Reproductive Harm - www.P65Warnings.ca.gov


9 Downlite shall have no obligation to affix a label to a Covered Product under this Section so long
10 as each such Covered Product already has a Proposition 65 warning label or statement on it that
11 both (1) meets the placement requirements of Section 3.3 and (2) either meets the warning
12 language requirements of this Section 3.3.1 or includes warning language expressly permitted by a
13 settlement agreement executed by Ms. Davia with the vendor who supplied the Covered Product
14 to Downlite.

15 3.3.2 Internet Website Warning.


16 A warning must be given in conjunction with the sale of any Covered Products by
17 Downlite via the Internet, provided it appears either: (a) on the same web page on which a Covered
18 Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the
19 same page as the price for any Covered Product; or (d) on one or more web pages displayed to a
20 purchaser during the checkout process. One of the following warning statements shall be used and
21 shall appear in any of the above instances adjacent to or immediately following the display,
22 description, or price of the Covered Product for which it is given in the same type size or larger than
23 the Covered Product description text:


24 **WARNING:** This packaging for this product contains DEHP,
25 a chemical known to the State of California to
26 cause cancer and birth defects or other
27 reproductive harm. *This packaging is not intended
28 as a storage container. Please discard packaging after
purchase;*


or

1  **WARNING** The vinyl packaging for this product can expose
2 you to chemicals, including DEHP, that are
3 known to the State of California to cause cancer
4 and birth defects or other reproductive harm.
For more information go to
www.P65Warnings.ca.gov;

5 or

6  **WARNING** for vinyl packaging for this product -- Cancer
7 and Reproductive Harm --
8 www.P65Warnings.ca.gov

9
10 Alternatively, the designated symbol  **WARNING** may appear adjacent to or immediately
11 following the display, description, or price of the Covered Product for which a warning is being
12 given, provided that the following warning statement also appears elsewhere on the same web
13 page, as follows:

14 **WARNING:** Products identified on this page with the
15 following symbol  **WARNING** include PVC
16 packaging containing DEHP, a chemical known
17 to the State of California to cause cancer and birth
defects or other reproductive harm.

18 **4. MONETARY PAYMENTS**

19 **4.1 Civil Penalty**

20 As a condition of settlement of all the claims referred to in this Consent to Judgment,
21 Downlite shall cause to be paid a total of \$11,000 in civil penalties in accordance with California
22 Health & Safety Code § 25249.12(c)(1) & (d).

23 **4.2 Augmentation of Penalty Payments**

24 For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon
25 Downlite and its counsel for accurate, good faith reporting to Davia of the nature and amounts of
26 relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents
27 to Downlite evidence that the Covered Products have been distributed by Downlite in sales volumes
28 materially different than those identified by Downlite prior to execution of this Agreement, then

1 Downlite shall be liable for an additional penalty amount of \$10,000.00. Downlite shall also be liable,
2 in accordance with the requirements of Code of Civil Procedure section 1021.5 for any reasonable,
3 additional attorney fees expended by Davia in discovering such additional retailers or sales. Davia
4 agrees to provide Downlite with a written demand for all such additional penalties and attorney
5 fees under this Section, and to provide written documentation supporting its allegation regarding
6 differing sales volumes. After service of such demand, Downlite shall have thirty (30) days to agree
7 to the amount of fees and penalties owing by Downlite and submit such payment to Davia in
8 accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4.
9 Should this thirty (30) day period pass without any such resolution between the parties and payment
10 of such additional penalties and fees, Davia shall be entitled to file a formal legal claim for additional
11 civil penalties pursuant to this Section and shall be entitled to all reasonable attorney fees and costs,
12 in accordance with the requirements of Code of Civil Procedure section 1021.5, relating to such
13 claim.

14 **4.3 Reimbursement of Plaintiff's Fees and Costs**

15 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
16 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
17 issue to be resolved after the material terms of the agreement had been settled. Downlite then
18 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
19 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Davia
20 and her counsel under general contract principles and the private attorney general doctrine codified
21 at California Code of Civil Procedure section 1021.5, for all work performed in this matter, except
22 fees that may be incurred on appeal. Under these legal principles, Downlite shall cause to be paid
23 to Davia's counsel the amount of \$35,000 for fees and costs incurred investigating, litigating and
24 enforcing this matter. Such payment shall be made payable to "Sheffer Law Firm".

25 **4.4 Payment Timing**

26 Downlite shall deliver all settlement payment funds required by this Agreement to its
27 counsel within two weeks of the date that this Agreement is fully executed by the Parties. Downlite's
28 counsel shall confirm receipt of settlement funds in writing to plaintiff's counsel and, thereafter,

1 hold the amounts paid in trust until such time as the Court approves this settlement contemplated
2 by Section 7.

3 Within two business days of the date plaintiff provides electronic mail notice to counsel for
4 Downlite that the Court has approved this settlement, Downlite's counsel shall deliver the
5 settlement payments to plaintiff's counsel as follows:

- 6 1. a civil penalty check in the amount of \$8,250 payable to "OEHHA" (EIN: 68-0284486,
7 Memo line "Prop 65 Penalties, 2016-00935");
- 8 2. a civil penalty check in the amount of \$2,750 payable to "Susan Davia" (Tax ID to be
9 supplied, Memo line "Prop 65 Penalties, 2016-00935"); and
- 10 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the amount
11 of \$35,000 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2016-00935")

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

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

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

- 21 1. a civil penalty check in the amount of 75% of the penalty agreed upon or ordered by
22 the Court pursuant to Section 4.2 payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop
23 65 Penalties, 2016-00935");
- 24 2. a civil penalty check in the amount of 25% of the penalty agreed upon or ordered by
25 the Court pursuant to Section 4.2 payable to "Susan Davia" (EIN: to be supplied upon
26 request), Memo line "Prop 65 Penalties, 2016-00935"); and
- 27 3. An attorney fee and cost reimbursement check, in the amount agreed upon or
28 ordered by the Court pursuant to Section 4.2 payable to "Sheffer Law Firm" (EIN 55-08-
58910, Memo line "2016-00935").

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

3 Sheffer Law Firm
4 Attn: Proposition 65 Controller
5 81 Throckmorton Ave., Suite 202
6 Mill Valley, CA 94941.

7 **5. CLAIMS COVERED AND RELEASED**

8 **5.1 Davia's Releases of Downlite**

9 **5.1.1.** This Agreement is a full, final, and binding resolution between Davia, on behalf of
10 herself, her past and current agents, representatives, attorneys, successors, and/or assignees, and in
11 the interest of the general public, and Downlite and each of its owners, officers, directors, parent
12 companies, subsidiaries and divisions ("Defendant Releasees") of any violation of Proposition 65
13 that has been or could have been asserted against Defendant Releasees regarding the failure to warn
14 about exposure to any Listed Chemical arising in connection with any Covered Product
15 manufactured, sourced, distributed, or sold prior to the Effective Date. Downlite's compliance with
16 this Agreement shall be deemed compliance with Proposition 65 with respect to the Listed Chemical
17 in the Covered Products after the Effective Date.

18 **5.1.2** Davia, on behalf of herself, her past and current agents, representatives, attorneys,
19 successors, and/or assignees, and in the interest of the general public, hereby waives, with respect
20 to Covered Products manufactured, distributed, sold and/or offered for sale by Defendant
21 Releasees prior to the Effective Date, all rights to institute or participate in, directly or indirectly, any
22 form of legal action and releases Defendant Releasees from all claims for violations of Proposition
23 65 with respect to the Listed Chemical in the Covered Products as set forth in the 60-Day Notices of
24 Violation identified in Section 1.5 of this Agreement.

25 **5.1.3** Davia, on behalf of herself, her past and current agents, representatives, attorneys,
26 successors, and/or assignees, hereby also waives, with respect to Covered Products manufactured,
27 distributed, sold and/or offered for sale by Defendant Releasees prior to the Effective Date, all rights
28 to institute or participate in, directly or indirectly, any form of legal action against all retailers or

1 others to whom Downlite sold the Covered Product from all claims for violations of Proposition 65
2 with respect to the Listed Chemical in the Covered Products as set forth in the 60-Day Notices of
3 Violation identified in Section 1.5 of this Agreement.

4 **5.1.4** This Section 5.1 release shall not extend upstream to any entities that manufactured
5 any Covered Product or any component parts thereof, or any distributors or suppliers who sold any
6 Covered Products or any component parts thereof to Downlite.

7 **5.2** Downlite's Release of Davia

8 **5.2.1** Downlite and Defendant Releasees waive any and all claims against Davia, her
9 attorneys, and other representatives for any and all actions taken or statements made (or those that
10 could have been taken or made) by Davia and her attorneys and other representatives, whether in
11 the course of investigating claims or otherwise seeking enforcement of Proposition 65 against it in
12 this matter, and/or with respect to the Covered Products.

13 **5.3** General Release - Each Party also provides, for the benefit of the other party and
14 Defendant Releasees, a general release herein which shall be effective as a full and final accord and
15 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
16 damages, losses, claims, liabilities and demands of any Party of any nature, character or kind, known
17 or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Each Party
18 acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as
19 follows:

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

25 Each Party expressly waives and relinquishes any and all rights and benefits that it may have
26 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code
27 as well as under any other state or federal statute or common law principle of similar effect, to the
28 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

1 claims or facts arising out of the released matters.

2 6. COURT APPROVAL

3 This Agreement is effective upon execution but must also be approved by the Court. Upon
4 approval of this Agreement by the Court, Davia shall dismiss the remaining defendants in this
5 Action with prejudice on the condition such remaining defendants agree to waive all fees and costs
6 in exchange for such dismissal. If the Court does not approve this Agreement in its entirety, the
7 Parties shall meet and confer to determine whether to modify the terms of the Agreement and to
8 resubmit it for approval. In meeting and conferring, the Parties agree to undertake any actions
9 reasonably necessary to amend and/or modify this Agreement in order to further the mutual
10 intention of the Parties in entering into this Agreement. The Agreement shall become null and void
11 if, for any reason, it is not approved and entered by the Court, as it is executed, within one year after
12 it has been fully executed by all Parties.
13

14 7. SEVERABILITY

15 If, subsequent to court approval of this Agreement, any of the provisions of this Agreement
16 is determined by a court to be unenforceable, the validity of the enforceable provisions remaining
17 shall not be adversely affected if all parties so agree, unless the Court finds that any unenforceable
18 provision is not severable from the remainder of the Agreement.
19

20 8. GOVERNING LAW

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

22 9. NOTICES

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

25 For Downlite Corporation:

26 Josh Werthaiser
27 Downlite International, Inc.
8153 Duke Blvd.
Mason, OH 45040

28 With copy to their counsel at:

1 Sandra Edwards, Esq.
2 Farella Braun + Martel
3 Russ Building
4 235 Montgomery Street, 17th Floor
5 San Francisco, CA 94104
6 sedwards@fbm.com

7 Bradley G. Haas
8 Katz Teller
9 255 East Fifth Street, Suite 2400
10 Cincinnati, OH 45202-4787
11 bhaas@katzteller.com

12 For Davia to:

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

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

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

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

22 **11. MODIFICATION**

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

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

26 The Parties stipulate to judgment being entered upon this Settlement Agreement. The Parties
27 further acknowledge and agree that, pursuant to Health & Safety Code §25249.7, a noticed motion
28 is required to obtain judicial approval of this Agreement. In furtherance of obtaining such approval,
Davia and Downlite, and their respective counsel, agree to mutually employ their best efforts to
support the entry of this Agreement as a settlement agreement and obtain approval of the
Agreement - sufficient to render an order approving this agreement - by the Court in a timely
manner. Any effort by Downlite to impede judicial approval of this Agreement shall subject such

1 impeding party to liability for attorney fees and costs incurred by plaintiff or her counsel in their
2 efforts to meet or oppose such Downlite's impeding conduct. Downlite's neutral position on matters
3 raised by or during the court approval proceeding shall not be deemed to be impeding behavior
4 under this section. Downlite further agrees to accept service of Notice of Entry of any order
5 approving the settlement, and any judgment, by electronic mail service to its counsel at the electronic
6 mail address identified in Section 9.

7 13. ENTIRE AGREEMENT

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

17 14. ATTORNEY'S FEES

18 14.1 Should Davia prevail on any motion, application for order to show cause or other
19 proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable
20 attorney fees and costs incurred as a result of such motion, order or application, if allowed under
21 C.C.P. §1021.5. Should a Downlite prevail on any motion, application for order to show cause or
22 other proceeding to enforce a violation of this Consent Judgment, a Downlite may be entitled to its
23 reasonable attorney fees and costs incurred as a result of such motion, order or application upon a
24 finding that Davia's prosecution of the motion or application lacked substantial justification. For
25 purposes of this Agreement, the term substantial justification shall carry the same meaning as used
26 in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

27 14.2 Except as specifically provided in the above paragraph and in Section 4.3, each Party
28 shall bear its own costs and attorney's fees in connection with this action.

1 **14.3** Nothing in this Section 14 shall preclude a Party from seeking an award of sanctions
2 pursuant to law.

3 **15. NEUTRAL CONSTRUCTION**

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

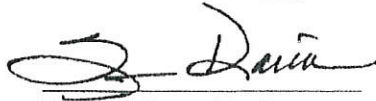

12 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

16 **17. AUTHORIZATION**

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

20 **IT IS SO AGREED.**

<p>21</p> <p>22 Dated: November <u>17</u>, 2017</p> <p>23 </p> <p>24 Plaintiff Susan Davia</p>	<p>22 Dated: November ^{DECEMBER} <u>28</u>, 2017</p> <p>23 </p> <p>24 James Lape, CEO JOSH WERTHAISER, 25 Downlite International, Inc. CEO</p>
---	---