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5 SUSAN DAVIA

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF MARIN
9 UNLIMITED CIVIL JURISDICTION
10

11 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 BALKAMP, INC., GENUINE PARTS
15 COMPANY, A&E INCORPORATED, A&E
16 TOOLS, LANG TOOLS and DOES 1-150,

17 Defendants.

Case No. CIV 1701730

**CONSENT TO JUDGMENT AS TO
DEFENDANT A&E INCORPORATED AND
ITS A&E TOOLS AND LANG TOOLS
DIVISIONS**

Action Filed: May 12, 2017
Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent to Judgment Settlement Agreement (“Agreement”) is entered into by and
4 between Plaintiff Susan Davia, (“Davia”) and defendants A&E Incorporated (including its
5 divisions, A&E Tools, Eckmann Custom Products, Cabat) and Lang Tools (hereafter, collectively,
6 “A&E” or “Defendant”), with Davia and A&E collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

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

11 **1.3 Defendants**

12 A&E Incorporated is a person in the course of doing business for purposes of the Safe
13 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et*
14 *seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Davia alleges that A&E participated in the manufacture (or other acquisition), distribution
17 and sale, into the State of California, of hand tools and pliers with vinyl-coated grips, including, but
18 not limited to Service Tools Mini Combination Snap Ring Pliers and Battery Nut Plier, containing
19 phthalates, which products exposed users to diisononyl phthalate (“DINP”) and di-isodecyl
20 phthalate (“DIDP”) without first providing any “clear and reasonable warning” under Proposition
21 65. DINP is listed as a carcinogen pursuant to Proposition 65 and DIDP is listed as a reproductive
22 toxin. DINP and DIDP shall hereinafter be collectively referred to as the “Listed Chemical.”

23 **1.5 Notices of Violation**

24 On October 11, 2016, Davia served Balkamp, Inc., Genuine Parts Company and various
25 public enforcement agencies with a Proposition 65 60-day Notice of Violation, together with a
26 Certificate of Merit (“Notice”), that provided public enforcers and these entities with notice of
27 alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence
28 of the Listed Chemical in and on their vinyl-coated hand tool products (AG Notice 2016-01166).

 On October 10, 2017, Davia served A&E Incorporated, A&E Tools, Lang Tools and various

1 public enforcement agencies with a Proposition 65 60-day Notice of Violation, together with a
2 Certificate of Merit (“Notice”), that also provided public enforcers and these entities with notice of
3 alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence
4 of the Listed Chemical in and on their vinyl-coated hand tool products (AG Notice 2017-02274).

5 A&E received AG Notice 2017-02274. The Parties represent that, as of the date each
6 executes this Agreement, they believe that no public enforcer is diligently prosecuting a
7 Proposition 65 enforcement action related to the Listed Chemical in the Covered Products, as
8 identified in the Notice.

9 **1.6 Complaint and First Amended Complaint**

10 On May 12, 2017, Davia, acting in the interest of the general public in California, filed a
11 Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV
12 1701730, alleging violations by Balkamp, Inc., Genuine Parts Company and Does 1-150 of Health &
13 Safety Code § 25249.6 based, *inter alia*, on the alleged exposures to the Listed Chemical contained in
14 certain vinyl-coated hand tool products.

15 On December 21, 2017, Davia, acting in the interest of the general public in California, filed
16 a First Amended Complaint in the Superior Court of the State of California for the County of
17 Marin, Case No. CIV 1701730, alleging violations by A&E, Balkamp, Inc., Genuine Parts Company
18 and Does 1-150 of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged exposures to the
19 Listed Chemical contained in certain vinyl-coated hand tool products.

20 **1.7 No Admission**

21 This Agreement resolves claims that are denied and disputed by A&E. The Parties enter
22 into this Agreement pursuant to a full and final settlement of any and all claims between the
23 Parties for the purpose of avoiding prolonged litigation. A&E denies the material factual and legal
24 allegations contained in the Notice and Action, maintains that it did not knowingly or intentionally
25 expose California consumers to the Listed Chemical through the reasonably foreseeable use of the
26 Covered Product and otherwise contends that all Noticed products it has manufactured,
27 distributed and/or sold in California have been and are in compliance with all applicable laws.
28 Nothing in this Agreement shall be construed as an admission by A&E of any fact, finding, issue of
law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an

1 admission by A&E of any fact, finding, conclusion, issue of law, or violation of law, such being
2 specifically denied by A&E. However, notwithstanding the foregoing, this section shall not
3 diminish or otherwise affect A&E's obligations, responsibilities, and duties under this Agreement.

4 **1.8 Consent to Jurisdiction**

5 For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction
6 over A&E as to the allegations contained in the Complaint and FAC, that venue is proper in
7 County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this
8 Agreement. As an express part of this Agreement, A&E stipulates that the Court in which this
9 action was filed shall retain jurisdiction over the parties to enforce the settlement until performance
10 in full of the terms of the settlement.

11 **2. DEFINITIONS**

12 **2.1** The term "Complaint" shall mean the May 12, 2017, Complaint, Marin County
13 Superior Court Case No. CIV 1701730 and the December 21, 2017, First Amended Complaint.

14 **2.2** The term "Products" or "Covered Products" shall mean all automotive hand tools,
15 ratcheting tools, diagnostic and specialty tools with vinyl grips or other vinyl covering
16 manufactured, distributed or sold by, or for, A&E Tools or Lang Tools, including, but not limited
17 to, quick switch pliers, retaining ring pliers, thread restorer files, tappet gauge sets, wrenches,
18 presses, spreaders, seat belt pre-tensioner release tools, rear isolator replacement tools, clutch
19 master cylinder pin presses, fuel line release tools and switch tool.

20 **2.3** The term "Phthalate Free" shall mean less than or equal to 1,000 parts per million
21 ("ppm") of DEHP, DBP, DINP, DIDP, DnHP and BBP, (collectively "Phthalates") in any
22 component of any Covered Product, determined by duplicate quality controlled tests using
23 Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C or equivalent
24 methodologies used by any California or Federal agency for purposes of determining the phthalate
25 content in a solid substance.

26 **2.4** "California Customer" shall mean any customer, vendor or retailer that is located
27 in California or that A&E reasonably understands makes sales to customers located in California,
28 including, but not limited to Balkamp Inc. or Genuine Parts Company.

2.5 The term "Effective Date" shall mean July 1, 2019.

1 **3. NON-MONETARY RELIEF**

2 **3.1 Existing Inventory of Covered Products**

3 No later than the Effective Date, A&E shall send a letter, electronic or otherwise
4 (“Notification Letter”) to all primary sales contacts at each retail customer to which A&E directly
5 sells Covered Products, and which retail customer A&E reasonably understands maintains any
6 remaining inventory of non-reformulated Covered Products without any Proposition 65 warning
7 label, advising such contacts that the Covered Products “have been demonstrated to contain DINP
8 and DIDP, phthalate chemicals known to the State of California to cause cancer and birth defects
9 or other reproductive harm” and requesting such retailers confirm that all such Covered Products
10 that are not confirmed to be Phthalate Free are either (a) labelled with the warning identified in
11 Section 3.3(a) or (b) immediately removed from sale to California customers and returned to A&E
12 at A&E’s own expense. The Notification Letter shall require a response from the recipient within
13 15 days, confirming the amount of inventory of Covered Product and whether such inventory of
14 Covered Products will be labeled or transferred. A&E shall maintain records of all
15 correspondence or other communications generated pursuant to this Section for two years after
16 the Effective Date and shall promptly produce copies of such records upon Davia’s written
17 request.

18 **3.2 Product Reformulation Commitment**

19 **3.2.1** A&E represents as a material term of this Agreement that, after becoming aware of
20 Davia’s claims regarding Covered Products, they made a good faith effort to notify their
21 customers of Covered Products that such products contained phthalates and should not be sold in
22 California without an appropriate Proposition 65 warning statement. No later than the Effective
23 Date, to the extent not already completed, A&E shall provide the Phthalate Free phthalate
24 concentration standards of Section 2.3 to the manufacturer or vendors of any Covered Product and
25 the vinyl coating component thereof (if known) and instruct each such entity not to incorporate
26 any raw or component materials that do not meet the Phthalate Free concentration standards of
27 Section 2.3 into any Covered Product. A&E shall maintain copies of all vendor correspondence
28 relating to the phthalate concentration standards and shall produce such copies to Davia within

1 fifteen (15) days of receipt of written request from Davia. Davia may make such a request for
2 vendor correspondence no more than twice every 12 months.

3 **3.2.2** After the Effective Date, A&E shall provide the Phthalate Free phthalate
4 concentration standards of Section 2.3 to any new manufacturer or vendor of the Covered Product
5 and the vinyl component thereof (if known) and instruct such manufacturer or vendor not to
6 incorporate any raw or component materials that do not meet the Phthalate Free concentration
7 standards of Section 2.3 into any Covered Product. Prior to purchase or other acquisition of any
8 Covered Product from any new manufacturer or vendor, A&E shall obtain a written confirmation
9 and accompanying laboratory test result from the new vendor demonstrating compliance with the
10 Phthalate Free phthalate concentration standard in all materials comprising the Covered Product
11 and a post-production sample of Covered Product. For every Covered Product A&E
12 manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from
13 a new vendor after the Effective Date, A&E shall maintain copies of all testing of such products
14 demonstrating compliance with this section, shall maintain copies of all vendor correspondence
15 relating to the Phthalate Free concentration standards and shall produce such copies to Davia
16 within fifteen (15) days of receipt of written request from Davia. Davia may make such a request
17 for vendor correspondence no more than twice every 12 months.

18 **3.2.3** After the Effective Date, A&E shall not manufacture or cause to be manufactured,
19 order or cause to be ordered, or distribute or cause to be distributed any Covered Product that is
20 not Phthalate Free.

21 **3.3 Product Warning for Existing Inventory**

22 A&E represents as a material term of this Agreement that, at the time of Davia's claims
23 regarding Covered Products, they were already making a good faith effort to apply Proposition 65
24 clear and reasonable warning labels to Covered Products. As of the Effective Date, to the extent
25 not already accomplished, A&E shall not sell, distribute or ship, or cause to be sold, distributed or
26 shipped, any existing inventory of Covered Product to a California Customer unless such Covered
27 Products are confirmed to be Phthalate Free or are sold or shipped with one of the clear and
28 reasonable warnings set forth hereafter.

Each warning shall be prominently placed with such conspicuousness as compared with

1 other words, statements, designs, or devices as to render it likely to be read and understood by an
2 ordinary individual under customary conditions *before* purchase or use. Each warning shall be
3 provided in a manner such that the consumer or user understands to which *specific* Covered
4 Product the warning applies, so as to minimize the risk of consumer confusion.

5 (a) **Product Labeling.** For all existing inventory of Covered Products
6 remaining in the possession, custody or control of A&E that have not been reformulated to meet
7 the Phthalate Free requirements of Section 2.3, A&E shall affix a warning to the labeling of the
8 Covered Product. For such remaining inventory labelled before August 30, 2018, the warning
9 label shall read:

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

13 For such remaining inventory labelled after August 30, 2018, the warning label shall read either:

14 **⚠WARNING:** Cancer and Reproductive Harm -
15 www.P65Warnings.ca.gov.

16 or

17 **⚠WARNING:** This product can expose you to chemicals,
18 including DEHP, which are known to the
19 State of California to cause cancer and birth
20 defects or other reproductive harm. For
21 more information go to
22 www.P65Warnings.ca.gov.

23 (b) **Catalog and Internet Sales.** For all Covered Products sold or offered for
24 sale by A&E via catalog or the Internet to California Customers, for so long as A&E maintains
25 inventory of Covered Products that are not Phthalate Free, any such catalog or Internet site
26 offering any Covered Product for sale shall include a warning in the catalog or within the website,
27 identifying the specific Covered Product to which the warning applies, as specified in Sections
28 3.2(b)(i) and (ii) below.

(i) **Mail Order Catalog Warning.** Any warning provided in a mail order
catalog first printed after the Effective Date must be in the same type size or larger than the Covered
Product description text within the catalog. For catalogs printed after the Effective Date, the
following warning shall be provided on the same page and in the same location as the display
and/or description of the Covered Product:

1 **▲WARNING:** This product can expose you to chemicals,
2 including DEHP, which are known to the
3 State of California to cause cancer and birth
4 defects or other reproductive harm. For
 more information go to
 www.P65Warnings.ca.gov.

5 Where it is impracticable to provide the warning on the same page and in the same
6 location as the display and/or description of the Covered Product, A&E may utilize the
7 designated symbol “▼” to cross reference the applicable warning For catalogs printed before
8 August 30, 2018, the following warning language shall appear on the inside of the front or back
9 cover of the catalog or on the same page as any order form for the Covered Product(s):

10 **WARNING:** Certain products identified with this symbol ▼
11 contain chemicals known to the State of
12 California to cause cancer and birth defects or
 other reproductive harm.

13 For catalogs printed after the Effective Date utilizing the symbol “▼,”the following warning
14 language shall appear on the inside of the front or back cover of the catalog or on the same page as
15 any order form for the Covered Product(s):

16 **▲WARNING:** Certain products identified with this
17 symbol ▼ can expose you to chemicals,
18 including DEHP, which are known to the
19 State of California to cause cancer and birth
 defects or other reproductive harm. For
 more information go to
 www.P65Warnings.ca.gov.

20 The designated symbol must appear on the same page and in close proximity to the
21 display and/or description of the Covered Product. On each page where the designated symbol
22 appears, A&E must provide a header or footer directing the consumer to the warning language
23 and definition of the designated symbol.

24 (ii) **Internet Website Warning.** A warning must be given in conjunction
25 with the sale, or offer of sale, of any Covered Products by A&E via the Internet, provided it appears
26 either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web
27 page as the order form for a Covered Product; (c) on the same page as the price for any Covered
28 Product; or (d) on one or more web pages displayed to a purchaser during the checkout process.
 The following warning statement shall be used and shall appear in any of the above instances

1 adjacent to or immediately following the display, description, or price of the Covered Product for
2 which it is given in the same type size or larger than the Covered Product description text:

3 **▲WARNING:** This product can expose you to chemicals,
4 including DEHP, which are known to the
5 State of California to cause cancer and birth
6 defects or other reproductive harm. For
7 more information go to
8 www.P65Warnings.ca.gov.

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

12 **▲WARNING:** Certain products identified with this
13 symbol ▼ can expose you to chemicals,
14 including DEHP, which are known to the
15 State of California to cause cancer and birth
16 defects or other reproductive harm. For
17 more information go to
18 www.P65Warnings.ca.gov.

19 After December 31, 2019, A&E shall not distribute or otherwise sell any Covered Product to
20 a California Customer unless it is Phthalate Free and shall not sell any products that are not
21 Phthalate Free to a California Customer regardless of whether a Proposition 65 warning
22 accompanies the product.

23 **4. MONETARY PAYMENTS**

24 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

25 As a condition of settlement of all the claims referred to in this Consent to Judgment, A&E
26 shall pay a total of \$8,000 in civil penalties in accordance with California Health & Safety Code §
27 25249.12(c)(1) & (d).

28 **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, Davia discovers
and presents to A&E evidence that the Covered Products have been distributed by A&E in sales

1 volumes materially different than those identified by A&E prior to execution of this Agreement,
2 then A&E shall be liable for an additional penalty amount of \$10,000.00. A&E shall also be liable
3 for any reasonable, additional attorney fees expended by Davia in discovering such additional
4 retailers or sales, up to a maximum of \$10,000 or some other amount awarded by the court after
5 hearing. Davia agrees to provide A&E with a written demand for all such additional penalties and
6 attorney fees under this Section. After service of such demand, A&E shall have thirty (30) days to
7 agree to the amount of fees and penalties owing by A&E 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
10 payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim for
11 additional civil penalties pursuant to this Section and shall be entitled to all reasonable attorney
12 fees and costs relating to such claim.

13 **4.3 Reimbursement of Plaintiff's Fees and Costs**

14 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
16 issue to be resolved after the material terms of the agreement had been settled. A&E then
17 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
18 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
19 to Davia and her counsel under general contract principles and the private attorney general
20 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in
21 this matter, except fees that may be incurred on appeal. Under these legal principles, A&E shall
22 pay the amount of \$51,000 for fees and costs incurred investigating, litigating and enforcing this
23 matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and
24 obtaining the Court's approval of this Agreement in the public interest.

25 **4.4 Payment Procedures**

26 A&E shall deliver all settlement payment funds required by Sections 4.1 and 4.3 of this
27 Agreement to its counsel within one week of the date that this Agreement is fully executed by the
28 Parties. A&E's counsel shall confirm receipt of settlement funds in writing to plaintiff's counsel
and, thereafter, hold the amounts paid in trust until such time as the Court approves this

1 settlement contemplated by Section 7.

2 Within two business days of the date plaintiff provides electronic mail notice to counsel for
3 A&E that the Court has approved this settlement, A&E's counsel shall deliver the settlement
4 payments required by Sections 4.1 and 4.3 to plaintiff's counsel as follows:

5 1. A civil penalty check in the amount of \$6,000 payable to "OEHHA" (EIN: 68-
6 0284486, Memo line "Prop. 65 Penalties, 2017-02274");

7 2. A civil penalty check in the amount of \$2,000 payable to "Susan Davia" (Tax ID to
8 be supplied, Memo line "Prop. 65 Penalties, 2017-02274"); and

9 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the
10 amount of \$51,000 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2017-
11 02274")

12 A&E shall satisfy its obligation to pay any civil penalties pursuant to Section 4.2 by civil
13 penalty checks payable to "OEHHA" and "Susan Davia" (Memo line "Prop. 65 Penalties, 2017-
14 02274"), in the amounts agreed to pursuant to Section 4.2 or as ordered by the Court.

15 A&E shall satisfy its obligation to pay any attorney fees or costs pursuant to Section 4.2 by
16 a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2017-02274"), in the amount
17 agreed to pursuant to Section 4.2 or as ordered by the Court.

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

20 Sheffer Law Firm
21 Attn: Proposition 65 Controller
22 81 Throckmorton Ave., Suite 202
23 Mill Valley, CA 94941

24 A&E shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts
25 due and owing from it under this Section that are not received by Sheffer Law Firm within two
26 business days of the due date for such payment.

27 5. CLAIMS COVERED AND RELEASE

28 5.1 Davia's Release of A&E

5.1.1 This Agreement is a full, final, and binding resolution between Davia, on behalf of
herself and in the public interest, and A&E and its attorneys, successors and assigns ("Defendant

1 Releasees”) and each entity to whom it directly or indirectly distributed or sold the Covered
2 Products, including, but not limited to, Balkamp, Inc. and Genuine Parts Company, (“Downstream
3 Releasees”) of any violation of Proposition 65 that was asserted against Defendant Releasees
4 regarding the failure to warn about exposure to any Phthalates contained in the Covered Products
5 distributed by A&E before the Effective Date.

6 **5.1.2** Davia, acting on her own behalf and in the public interest, hereby waives, and
7 releases Defendant Releasees and Downstream Releasees from all claims for violation of
8 Proposition 65 based upon exposures to the Phthalates from Covered Products distributed by A&E
9 prior to the Effective Date.

10 **5.1.3** The Parties understand and agree that this Section 5.1 release does not extend
11 upstream to any entities that manufactured any Covered Product or any component parts thereof,
12 or any distributors or suppliers who sold any Covered Products or any component parts thereof to
13 Defendants.

14 **5.1.4** Upon court approval of the Agreement, the Parties waive their respective rights to a
15 hearing or trial on the allegations of the Complaint.

16 **5.2** A&E’s Release of Davia

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

22 **6. GENERAL RELEASE**

23 The Parties also provide each other with a general release herein which shall be effective as a full
24 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
25 expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of any nature, character
26 or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the
27 Action. The Parties acknowledge that each is familiar with Section 1542 of the California Civil
28 Code, which provides as follows:

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE

CONSENT TO JUDGMENT

1 CREDITOR OR RELEASED PARTY DOES NOT KNOW OR SUSPECT TO EXIST
2 IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND
3 THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED
4 HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

5 The Parties expressly waive and relinquish any and all rights and benefits that each may
6 have under, or which may be conferred on it by the provisions of Section 1542 of the California
7 Civil Code as well as under any other state or federal statute or common law principle of similar
8 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the
9 released matters. In furtherance of such intention, the release hereby given shall be and remain in
10 effect as a full and complete release notwithstanding the discovery or existence of any such
11 additional or different claims or facts arising out of the released matters.

12 **7. SEVERABILITY**

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

17 **8. COURT APPROVAL**

18 This Agreement is effective upon execution but must also be approved by the Court. If this
19 Agreement is not approved by the Court in its entirety, the Parties shall meet and confer to
20 determine whether to modify the terms of the Agreement and to resubmit it for approval. In
21 meeting and conferring, the Parties agree to undertake any actions reasonably necessary to amend
22 and/or modify this Agreement in order to further the mutual intention of the Parties in entering
23 into this Agreement.

24 The Agreement shall become null and void if, for any reason, it is not approved and entered
25 by the Court, as it is executed, within one year after it has been fully executed by all Parties.

26 **9. GOVERNING LAW**

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

28 **10. NOTICES**

When any Party is entitled to receive any notice under this Agreement, the notice shall be
sent by tracked mail and electronic mail (if applicable) to the following:

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For A&E, to:

John W. Lang, President & COO
A & E Incorporated
5501 21st Street
Racine, WI 53406

With a copy to their counsel:

J. T. Wells Blaxter
Blaxter Blackman LLP
601 California Street, Suite 1505
San Francisco, California 94108

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.

11. 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) and to file a motion for approval of this Agreement.

12. MODIFICATION

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

1 **13. ADDITIONAL POST-EXECUTION ACTIVITIES**

2 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
3 motion is required to obtain judicial approval of this Agreement. In furtherance of obtaining such
4 approval, Davia and each A&E, and their respective counsel, agree to mutually employ their best
5 efforts to support the entry of this Agreement as a settlement agreement and obtain approval of the
6 Agreement - sufficient to render an order approving this agreement - by the Court in a timely
7 manner. Any effort by A&E to impede judicial approval of this Agreement shall subject such
8 impeding party to liability for attorney fees and costs incurred by plaintiff or her counsel in their
9 efforts to meet or oppose such A&E's impeding conduct.

10 **14. ENTIRE AGREEMENT**

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

20 **15. ATTORNEYS' FEES**

21 Should Davia or A&E prevail on any motion, application for order to show cause or other
22 proceeding to enforce a violation of this Agreement, such prevailing party shall be entitled to their
23 reasonable attorney fees and costs incurred as a result of such motion, order or application,
24 consistent with C.C.P. §1021.5.

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

27 Nothing in this Section 14 shall preclude a Party from seeking an award of sanctions
28 pursuant to law.

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16. 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.

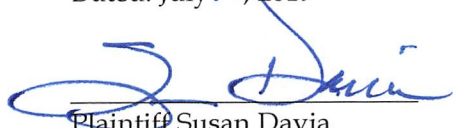
17. COUNTERPARTS, FACSIMILE SIGNATURES

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.

18. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: July , 2019</p> <p>_____ John W. Lang, President & COO A&E Incorporated</p>	<p>Dated: July 15, 2019</p> <p> Plaintiff Susan Davia</p>
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<p>20 August 1st 21 Dated: June, 2019</p> <p>22  23 Max Koell 24 Vice President of Marketing and 25 Product Management A&E Incorporated</p>	<p>20 Dated: June , 2019</p> <p>21 _____ 22 Plaintiff Susan Davia</p>
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26 John W. Lang
27 President and C.O.O.
28 A & E Incorporated