

**PROPOSITION 65 SETTLEMENT AGREEMENT  
SUSAN DAVIA AG NOTICE 2016-01169**

**1. INTRODUCTION**

**1.1 The Parties**

This settlement agreement (“Agreement”) is entered into by and between noticing party Susan Davia (“Davia”) and notice recipient Liberty Hardware Manufacturing Corp. (“Liberty”) with Davia and Liberty 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 Liberty Hardware Manufacturing Corp.**

Liberty Hardware Manufacturing Corp. 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”). Liberty Hardware Manufacturing Corp. is alleged to have been responsible for the manufacture and distribution of the products subject to this Agreement.

**1.4 General Allegations**

Davia alleges that Liberty participated in the manufacture, distribution and/or sale of vinyl-coated hooks that exposed California consumers to DEHP without Liberty first providing a “clear and reasonable warning” under Proposition 65. DEHP is listed as a carcinogen and reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical” or “DEHP.”

**1.5 Notices of Violation**

On October 11, 2016, Davia served Liberty 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 Proposition 65 for failing to warn consumers of the presence of DEHP in vinyl coated hooks sold in California (AG Notice 2016-01169). For purposes of this

Agreement, the October 11, 2016, Notice referenced above shall be hereafter to as "Notice".

Liberty received the Notice and represents that, as of the date it executes this Agreement, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to DEHP in the Covered Products, as identified in the Notice.

#### **1.6 No Admission**

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

## **2. DEFINITIONS**

**2.1** The term "Covered Products" shall mean vinyl coated utility hooks distributed or caused to be distributed in California by Liberty including, but not limited to, Arrow 1 ¼ Vinyl Cup Hook, 36 per pkg. (160375), Arrow Storage Hook Red Vinyl Coated, 6 per pkg. (160382), Arrow Storage Hooks Value Pak, 10 per pkg. (160391), Arrow 1 ¾ Large Vinyl Coated Cup Hook, 2 per pkg. (172219) and Arrow Over the Door Valet Hook (160947).

**2.2** The term "Phthalate Free" Covered Products shall mean Covered Products with vinyl coating confirmed to contain less than or equal to 1,000 parts per million ("ppm") of DEHP, DBP, DINP, DIDP, DnHP and BBP through testing using Environmental Protection Agency ("EPA") testing

methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies for the purpose of determining the phthalate content in a solid substance. Testing to determine the phthalate content in the Covered Products, and if the Covered Products are "Phthalate Free" within the meaning of this Section, shall be performed on appropriate samples of the finished product (as opposed to the raw material used for manufacture of the Covered Products) by a laboratory that is either certified by the State of California or accredited by the State of California, a federal agency, the National Environmental Laboratory Accrediting Program or similar nationally recognized accrediting organization, or an international laboratory that is accredited by its jurisdiction with respect to ISO/IEC 17025:2005 General Requirements for Competence of Testing and Calibration Laboratories to perform the particular method of detection and analysis in question. Liberty will maintain copies of documents that relate to the Phthalate content (or lack thereof) of the Covered Products and will produce copies of the same to Davia within fifteen (15) business days of receipt of a written request by Davia for the same.

**2.3** "Effective Date" shall mean the date on which this Agreement is executed by all Parties.

### **3. INJUNCTIVE-TYPE RELIEF**

#### **3.1 Products No Longer in Liberty's Control**

No later than the March 31, 2017, Liberty shall send a letter, electronic or otherwise ("Notification Letter") to: Target and any other California retailer that Liberty reasonably understands or believes has any inventory for resale in California of Covered Products which has not already been labeled in the manner described in Section 3.3 below that requests the recipient to (1) label any such Covered Products with Proposition 65 warnings (that comply with Section 3.3) to the extent they may be offered for sale in California in the future, or (2) return to Liberty, at Liberty's sole expense, all units of the Covered Product without such warning statement in exchange for Covered Products that comply with the requirements of Sections 3.2. or 3.3 below. Liberty shall maintain records of all correspondence or other communications generated pursuant to this Section for two years after the

Effective Date and shall promptly produce copies of such records upon Davia's written request.

### **3.2 Product Reformulation Commitment**

Liberty represents as a material term of this Agreement that, promptly after receipt of Davia's Notice, it expended significant resources to reformulate Covered Products to reduce or remove the amount of any Listed Chemical. As of the Effective Date, Liberty shall not manufacture, cause to be manufactured or obtain any Covered Products that are not "Phthalate Free" (as that term is defined in Section 2.2 of this Agreement). Liberty shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards and shall produce such copies to Davia within fifteen (15) days of receipt of written request from Davia.

### **3.3 Warnings On Existing Inventory**

Liberty represents as a material term of this Agreement that, after receipt of Davia's Notice and prior to the Effective Date, it implemented a warning program for all inventory of Covered Products maintained or obtained by Liberty that was not Phthalate Free. As of the Effective Date, for any Covered Product that is not Phthalate Free, Liberty shall not sell or ship such Covered Product to a California customer or retailer, or sell or ship such Covered Product to a customer or retailer that Liberty reasonably understands maintains retail outlets in the California, unless such Covered Products are shipped with the clear and reasonable warning set forth hereafter.

Each warning utilized by Liberty to comply with this agreement shall be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions of purchase or use. The warnings shall be provided in a manner such that consumers or users can be expected to reasonably understand to which *specific* Covered Product the warning applies, so as to minimize the risk of consumer confusion.

Warnings that are affixed to the packaging, labeling or directly on each Covered Product shall state:

**WARNING:** This product contains DEHP, a chemical known to the State of California to cause cancer and birth defects or

other reproductive harm.

#### **4. MONETARY PAYMENTS**

##### **4.1 Civil Penalty**

In settlement of all the claims referred to in this Agreement, Liberty shall pay a total of \$11,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Davia. All penalty payments shall be delivered to the addresses listed in Section 4.4 below

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

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon Liberty and its counsel for accurate, good faith reporting to Davia of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents to Liberty evidence that the Covered Products have been distributed by Liberty in sales volumes materially different than those identified by Liberty prior to execution of this Agreement, then Liberty shall be liable for an additional penalty amount of \$10,000.00 and reasonable, additional attorney fees expended by Davia in discovering such additional sales. Davia agrees to provide Liberty with a written demand for all such additional penalties and attorney fees (“Demand”) under this Section. Davia agrees that the Demand shall identify the: (1) alleged correct amount of Liberty’s California Covered Products sales; (2) California Covered Product sales earlier reported by Liberty to Davia and (3) source of the alleged correct sales information. Davia further agrees that any Demand for attorneys’ fees must be itemized in such manner as to reasonably support the attorney fee demand being made. After its receipt of such Demand, Liberty shall have sixty (60) days to “meet and confer” with Davia and reach agreement with Davia as to the amount of fees owing by Liberty and to submit payment of the additional penalties and fees to Davia in accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4. Should this sixty (60) day period pass without the Parties having

reached a resolution and payment made, then Davia shall be entitled to file a formal legal claim for compelling payment of the amount of additional civil penalties contemplated pursuant to this Section. The prevailing party shall be entitled to recover its reasonable attorney fees and costs relating to the prosecution or defense of such claim.

#### **4.3 Reimbursement of Davia's Fees and Costs**

**4.4** The parties acknowledge that Davia and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Liberty then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. The parties then attempted to (and did) reach an accord on the compensation due to Davia and her counsel under general contract principles and the private attorney general doctrine codified at California code of civil procedure section 1021.5, for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, liberty shall pay Davia's counsel the amount of \$25,500 for fees and costs incurred investigating, litigating and enforcing this matter. Such payment shall be made payable to "Sheffer Law Firm."

#### **4.5 Payment Procedures**

**4.5.1** Liberty shall satisfy its obligation to pay civil penalties pursuant to Section 4.1 by delivery of a civil penalty check payable to "OEHHA" (EIN 68-0284486, memo line "Prop. 65 penalties, 2016-01169"), in the amount of \$8,250 and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied on request, memo line "Prop. 65 penalties, 2016-01169") in the amount of \$2,750.

**4.5.2** Liberty shall satisfy its obligation to pay civil penalties pursuant to Section 4.2 by delivery of a civil penalty check payable to "OEHHA" (EIN 68-0284486, memo line "Prop. 65 penalties, 2016-01169"), in the amount of 75% of the total section 4.2 penalty and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied upon request, memo line "Prop. 65 penalties, 2016-01169") in the amount of 25% of the total section 4.2 penalty.

**4.5.3** Liberty shall satisfy its obligation to pay attorney fees and costs pursuant to Section 4.2 and 4.3 by delivery of a check payable to "Sheffer Law Firm" (EIN 55-08-58910, memo line "2016-01169") in the amount of \$25,500.

All civil penalty and attorney fee/cost payments shall be delivered to plaintiff's counsel at the following address within ten business days of execution of this Agreement:

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

**4.6 Issuance of 1099 Forms**

After this Agreement has been executed and the settlement funds have been transmitted to Davia's counsel, Liberty shall issue three separate 1099 forms, as follows:

- (a) A Form 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Section 4.1 and any later amount paid pursuant to Section 4.2;
- (b) A Form 1099 shall be issued to Davia in the amount paid pursuant to Section 4.1 and any later paid pursuant to Section 4.2; and
- (c) A Form 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Sections 4.2 and 4.3.

**4.7 Delayed or Non-Payment of Civil Penalties or Attorney Fees**

Liberty's failure to deliver any of the above-referenced civil penalties or attorney fee/cost payments to the designated location and by the required date shall result in imposition of a 10% per annum simple interest assessment on the undelivered payment(s) until delivery. While the obligations of this Agreement are binding upon execution, the Release of Liberty and any other entity under this Agreement shall not become effective until all monetary payments have been made by Liberty and all funds have cleared.

## **5. RELEASES**

### **5.1 DAVIA'S RELEASE OF LIBERTY**

**5.1.1** This Agreement is a full, final and binding resolution between Davia and Liberty of any violation of Proposition 65 that was or could have been asserted by Davia on behalf of herself, her past and current representatives or attorneys, against Liberty, its parents, affiliates (including Arrow Fastener Company), subsidiaries, directors, officers, employees, attorneys, and each entity to whom Liberty directly or indirectly distributed or sold Covered Products, including, but not limited, to downstream distributors (including Arrow Fastener Company), wholesalers, customers, retailers (including, but not limited to, Target, Wal-Mart, and Amazon) (collectively "Releasees"), based on their failure to warn about alleged exposures to DEHP contained in the Covered Products that were manufactured, distributed, sold and/or offered for sale by Liberty in California before the Effective Date.

**5.1.2** In further consideration of the promises and agreements herein contained, Davia on behalf of herself, her past and current representatives and attorneys, hereby releases Liberty and Releasees from all claims that Davia may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses, but exclusive of fees and costs on appeal -- limited to and arising under Proposition 65 with respect to the DEHP in the Covered Products manufactured, distributed, sold and/or offered for sale by Liberty before the Effective Date.

**5.1.3** Davia also, in her individual capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Davia, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notices as to Covered Products manufactured, distributed or sold by Liberty or Releasees before the Effective Date. Davia acknowledges that she is familiar with section 1542 of the California civil code, which provides as follows:



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

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

This Section 5.1 release shall not extend upstream to any entities, other than Liberty, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to Liberty.

## **5.2 Release of Davia**

The Release by Davia is mutual. Liberty on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Davia and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Davia and her attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products. Liberty acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Liberty expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on him by the provisions of Section 1542 of the California Civil Code

as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

**6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve months of the execution of this Agreement, Liberty may ask Davia, in writing, to file a complaint, incorporate the terms of this Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Davia agrees to reasonably cooperate with Liberty and to use her best efforts, and that of her counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Liberty will reimburse Davia and her counsel for their reasonable fees and costs incurred in filing the complaint, converting the Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$12,000.00, exclusive of fees and cost that may be incurred on appeal. Liberty will remit payment to the Sheffer Law Firm, at the address set forth in Section 9 below. Such additional fees shall be paid by Liberty within ten days after its receipt of an itemized invoice from Davia for work performed under this paragraph. Liberty understands no motion to approve any proposed consent judgment will be filed absent payment for the work performed under this paragraph. All payments owed to Davia, pursuant to Section 6 shall be delivered to the following payment address:

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

Liberty's failure to timely pay Davia invoices under this Section shall result in the assessment of ten percent (10%) per annum interest on any outstanding balance.

**7. SEVERABILITY**

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of the enforceable provisions remaining shall not be adversely affected, unless the Court finds that any unenforceable provision is not severable from the remainder of the Agreement.

**8. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California and any disputes arising hereunder, or any actions to enforce the terms of this Agreement, shall be venued in the Marin County Superior Court. Should Proposition 65 be repealed or otherwise rendered inapplicable by reason of law generally or as to the Covered Products, then Liberty may apply to the Marin County Superior Court, after proper notice to Davia, for a finding and order that Liberty shall have no further obligations pursuant to this Agreement.

**9. NOTICES**

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

For Liberty Hardware Manufacturing Corp., to:

Mark Stull, President  
Liberty Hardware Manufacturing Corp.  
140 Business Park Drive  
Winston Salem NC 27107-6539

With a copy to their counsel:

Robert L. Falk, Esq.  
Morrison & Foerster, LLP  
425 Market Street  
San Francisco, CA 94105-2482  
Email: [rfalk@mof.com](mailto:rfalk@mof.com)

For Davia to:

Proposition 65 Coordinator

Sheffer Law Firm  
81 Throckmorton Ave., Suite 202  
Mill Valley, CA 94941

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

**10. 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).

**11. MODIFICATION**

This Agreement may be modified only by written agreement of the Parties or court order.

**12. ENTIRE AGREEMENT**

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

**13. ATTORNEY'S FEES**

**13.1** Should Davia be deemed the "prevailing party" on any motion, application for order to show cause or other proceeding to enforce a violation of a material provision of this Agreement, or to defend against any motion, application or other proceeding by Liberty to enforce a violation of this Agreement, then Davia may be entitled to recover her reasonable attorney fees and costs incurred as a result of bringing such motion, order or application, consistent with C.C.P. § 1021.5 or defending against Liberty's motion, application or other proceeding. Should Liberty be deemed the "prevailing party" on any motion, application for order to show cause or other proceeding to enforce a violation of

a material provision of this Agreement, or to defend against any motion, application or other proceeding by Davia to enforce a violation of this Agreement, then Liberty may be entitled to recover its reasonable attorney fees and costs incurred as a result of bringing such motion, order or application or defending against Davia's motion, application or other proceeding.

**13.2** Except as otherwise specifically provided herein, each Party shall bear its own costs and attorney's fees in connection with the Notices.

**13.3** Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

#### **14. NEUTRAL CONSTRUCTION**

Both 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.

#### **15. ENFORCEMENT**

Before moving to enforce the terms and conditions of this Agreement with respect to Liberty's alleged sale of Covered Products that are not "Phthalate Free" (as that term is defined in Section 2.2 of this Agreement), or do not otherwise comply with Section 3 of this Agreement, Davia shall notify Liberty, in writing, of such alleged violation (Notice of default). In such Notice of Default, Davia shall identify: (i) each Covered Product that was allegedly not "Phthalate Free" (as that term is defined in Section 2.2 of this Agreement) or was otherwise sold in violation of Section 3 of this Agreement; (ii) the place or places where each such violative Covered Product was purchased, (iii) the dates each such violative Covered Product was purchased and (iv) the facts supporting the allegation that such

Covered Product was not "Phthalate Free" (as that term is defined in Section 2 of this Agreement) or was otherwise in violation of Section 3 of this Agreement. In the event, Liberty, no later than thirty (30) days after its receipt of such Notice of Default, does not provide Davia with a test report from a laboratory that satisfies Section 2.2 of this Agreement, that supports Liberty's claim that the identified Covered Products were "Phthalate Free" or otherwise provide Davia with evidence that the Covered Products otherwise met the requirements of Section 3, then Liberty shall pay Davia, as a stipulated penalty, the sum of \$3 per violative unit, up to a maximum of \$10,000 for each Notice of Default and shall pay Davia her reasonable attorney fees (if agreed upon by the Parties). In the event Liberty wishes to contest the Probationary Notice of Default, Liberty shall provide Davia with evidence in support of its position and if Davia agrees with Liberty, then Davia shall not take any further action. However, should Davia disagree with Liberty's position, then Davia shall, within thirty (30) days of receipt of all information from Liberty supporting its dispute of the Probationary Notice of Default, provide Liberty in writing with the reasons for its disagreement. Should the Parties be unable to resolve their dispute, Davia may seek to enforce the terms of this Agreement. The prevailing party shall retain their right to recover their attorneys' fees and costs incurred in: (1) securing enforcement of this Agreement under this Section or (2) defending against enforcement of this Agreement under this Section.

Liberty may avail itself of the stipulated penalty option described above at least two times and only thereafter with Davia's consent. After the assessment of the first two stipulated penalties under this Section, and absent other consent by Davia, the amount of any subsequent penalty assessment will be negotiated by the Parties or resolved by the Court or an agreed upon arbitrator.

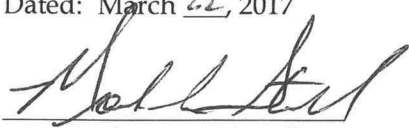
## **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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


**IT IS SO AGREED**

<p>Dated: March <u>22</u>, 2017</p>  <p>Name: <u>MARK A. STULL</u> Title: <u>President</u> Liberty Hardware Manufacturing Corp.</p>	<p>Dated: March __, 2017</p> <hr/> <p>Susan Davia</p>
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**17. AUTHORIZATION**

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

**IT IS SO AGREED**

<p>Dated: March __, 2017</p> <p>_____</p> <p>Name: Title: Liberty Hardware Manufacturing Corp.</p>	<p>Dated: March <u>24</u>, 2017</p> <p> _____ Susan Davia</p>
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