PROPOSITION 65 SETTLEMENT AGREEMENT
(Susan Davia AG Notice 2017-02097)

1. INTRODUCTION

1.1 The Parties

This settlement agreement ("Agreement" or "Settlement Agreement") is entered into by and between Susan Davia ("Davia") and Dick's Sporting Goods, Inc. and American Sports Licensing, Inc. (collectively, "Settling Defendant" or "Dick's"), with Davia and Dick's 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 Dick's Sporting Goods, Inc. and American Sports Licensing, Inc.

Each Dick's Sporting Goods, Inc. and American Sports Licensing, Inc. 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 Dick's participated in the manufacture (or other acquisition), distribution and/or sale, in the State of California, of vinyl/PVC waterproof storage bags, cases and accessories, which bags, cases and other accessories allegedly exposed users to di-isodecyl phthalate (DIDP) and di(isononyl)phthalate (DINP) without first providing a "clear and reasonable warning" under Proposition 65. DINP is a listed carcinogen pursuant to Proposition 65 and DIDP is a listed developmental toxin pursuant to Proposition 65. DINP and DIDP shall hereinafter, collectively, be referred to as the "Listed Chemical".

1.5 Notice of Violation

On September 8, 2017, Davia served Dick's 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 DIDP and DINP found in Covered Products sold in California. Dick's received this 60-Day Notice of Violation (the "Notice").

Dick's and Davia represent that, as of the date each executes this Agreement, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to DIDP or DINP in the Covered Products as identified in that Notice to Dick's.

1.6 No Admission

This Agreement resolves claims that are denied and disputed by Dick's. The Parties enter into this Agreement pursuant to a full, final and binding settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Dick's denies the material factual and legal allegations contained in the Notices, maintains that it did not knowingly or intentionally expose California consumers to any Listed Chemical through the reasonably foreseeable use of the Covered Products and otherwise contends that, all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission by Dick's 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 Dick's of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Dick's. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Dick's obligations, responsibilities, and duties under this Agreement.

1.7 Consent to Jurisdiction

For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over Dick's as to the allegations in the Notice and that venue is proper in the County of Marin. As an express part of this Agreement, this Agreement shall be considered as made pursuant to Code of Civil Procedure Section 664.6, and the Marin County Superior Court shall have jurisdiction over the Parties to enforce this Agreement until performance in full of the terms of the settlement.

2. DEFINITIONS

2.1 The term "Product" or "Covered Product" shall mean all Quest brand vinyl waterproof outdoor activity bags (all sizes and colors) including, but not limited to, Quest 10L, 25L and 35L Dry Bag and Quest 55l Reinforced Dry Bag.

2.2 The term Compliant Covered Product shall mean that each component of each Covered Product contains less than or equal to 1,000 parts per million ("ppm") of di(2-ethylhexyl phthalate) ("DEHP"), dibutyl phthalate ("DBP"), diisononyl phthalate ("DINP"), diisodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP") and butyl benzyl phthalate ("BBP") as determined by test results using Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C or other methodology utilized by the California or Federal Government for determining the concentration of phthalates in a solid substance.

2.3 "California Customer" shall mean any distributor and/or retailer of the Covered Products that is located in California, has a California ship to address or that Dick's reasonably understands maintains a retail store in California or sells to customers located in California.

2.4 "Effective Date" of this Settlement Agreement shall be the date upon which it is fully executed by all Parties.

3. INJUNCTIVE-TYPE RELIEF

3.1 Product Reformulation Commitment

3.1.1 No later than the Effective Date, Dick's shall only sell or offer for sale Covered Products in the State of California that are Compliant Covered Products or those Covered Products exhibiting a warning in compliance with Section 3.2.

3.1.2 As a material term of this Agreement, Dick's represents that the Covered Products have been discontinued and Dick's no longer procures new inventory of Covered Products. As a condition and consequence of this discontinuation, Dick's shall have no requirement to provide the vendor(s) of the Covered Product with the Compliant Covered Product Phthalate Free phthalate concentration standards of Section 2.2.

3.1.3 After the Effective Date, Dick's shall require any New Vendors of any Covered Product to comply with the Compliant Product Phthalate Free phthalate concentration standards of Section 2.2 or to inquire as to such vendors whether component materials that meet the Phthalate Free concentration standards of Section 2.2 can be incorporated into any Covered Product without compromising product performance. "New Vendors" means vendors of Covered Products from whom Dick's was not obtaining Covered Products as of the Effective Date. Prior to purchase and acquisition of any Covered Product from any New Vendor, Dick's shall obtain written confirmation and/or laboratory test results from the New Vendor demonstrating whether it has been able to comply with the Phthalate Free phthalate concentration standard for all materials comprising the Covered Product.

3.2 Covered Product Warnings.

As a material term of this Agreement, Dick's represents that it has already commenced providing the remaining California inventory of Covered Products with clear and reasonable Proposition 65 warnings. After the Effective Date, Dick's shall not sell any Covered Product to a California Customer unless the Covered Product is labelled with a Proposition 65 warning label.

3.2.1 Covered Product Warning Label.

For Covered Products labeled before August 30, 2018, one of the following warnings shall appear on the Covered Product:

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

or

WARNING: This product can expose you to chemicals including DINP and DIDP that are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

or

⚠ **WARNING** [waterproof vinyl case –] Cancer and Reproductive Harm - www.P65Warnings.ca.gov

After August 30, 2018, Dick's shall label any Covered Product available for sale to a California Customer, that has not already been labeled with a Proposition 65 warning, with one of the following warnings. The Parties agree that any of the following warnings, which may not appear identical as to form so long as materially identical in substance, shall constitute a compliant warning for the Covered Products.

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

> ⚠ **WARNING** This product can expose you to chemicals including DINP and DIDP that are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov

or

> ⚠ **WARNING** [waterproof vinyl case –] Cancer and Reproductive Harm - www.P65Warnings.ca.gov

Any bracketed language is optional. Dick's may also comply with this warning requirement by utilizing any other warning statement that is expressly identified under 27 C.C.R. Section 25603 for chemicals that are both cancer and reproductive toxicants.

3.2.2 Internet Website Warning.

For Covered Products sold into the State of California by or on behalf of Dick's after August 30, 2018, through an ecommerce website, a warning must be given in conjunction with any such sale either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. One of the following warning statements shall be used and shall appear in any of the above instances adjacent to or

immediately following the display, description, or price of the Covered Product.

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

or, only for Covered Products sold with the warning statement also contained on the label of the Covered Product itself,

> [waterproof vinyl case –] Cancer and Reproductive Harm - www.P65Warnings.ca.gov

3.2.3 The warning requirements set forth in this Section 3.2 shall not apply to:

(a) Covered Products in Dick's Sporting Good's inventory that were manufactured, on or before July 1, 2018; and

(b) Covered Products manufactured, distributed, marketed, sold or shipped for sale or use outside the State of California.

4. MONETARY PAYMENTS

4.1 Civil Penalty

As a condition of settlement of all the claims referred to in this Consent to Judgment, Dick's shall cause to be paid a total of $3,500 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1) & (d).

4.2 Augmentation of Penalty Payments

For purposes of the penalty assessment under this agreement, Davia is relying entirely upon Dick's 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 Dick's evidence that the covered products have been distributed by Dick's in sales volumes materially different (greater than 20%) than those identified by Dick's prior to execution of this agreement, then Dick's shall be liable for an additional penalty amount of $10,000.00. Davia agrees to provide Dick's with a written

demand for all such additional penalties and attorney fees under this section. After service of such demand, Dick's shall have thirty (30) days to agree to the amount of fees and penalties owing by Dick's and submit such payment to Davia in accordance with the method of payment of penalties and fees identified in section 4.1 and 4.4. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim for additional civil penalties pursuant to this section and shall be entitled to all reasonable attorney fees and costs, in accordance with the requirements of code of civil procedure section 1021.5, relating to such

4.3 Reimbursement of Davia's Fees and Costs

The Parties have reached 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, Dick's shall cause to be paid to Davia's counsel the amount of $24,000 for fees and costs incurred investigating, litigating and enforcing this matter. Such payment shall be made payable to "Sheffer Law Firm".

4.4 Payment Procedures

Dick's 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, 2017-02097"), in the amount of $2,625 and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2017-02097") in the amount of $875. Davia shall be responsible for delivering to the California Office of Environmental Health Hazard Assessment the civil penalty check payable to OEHHA.

Dick's shall satisfy its obligation to pay attorney fees and costs pursuant to Section 4.3 by delivery of a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2017-02097") in the amount of $24,000.

Dick's shall satisfy its obligation to pay any civil penalties pursuant to Section 4.2 by civil penalty checks payable to "OEHHA" and "Susan Davia" (Memo line "Prop 65 Penalties, 2017-02097"), in the

amounts agreed to pursuant to Section 4.2 or as ordered by the Court.

Dick's shall satisfy its obligation to pay any attorney fees or costs pursuant to Section 4.2 by a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2017-02097), in the amounts agreed to pursuant to Section 4.2 or as ordered by the Court.

All Section 4.1 and Section 4.3 civil penalty and attorney fee/cost payments shall be delivered to plaintiff's counsel within fifteen (15) business days after execution of this Agreement and receipt of a W-9 for each payee, at the following address:

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

All Section 4.2 civil penalty and attorney fee/cost payments shall be delivered to plaintiff's counsel at the following address on or before the date agreed upon pursuant to that section or ordered by the Court:

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

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

4.5 Issuance of 1099 Forms

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

(a) The first 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 Sections 4.1 and 4.2;

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

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

5. RELEASES

5.1 DAVIA'S RELEASE OF DICK'S

5.1.1 This settlement agreement is a full, final and binding resolution between Davia, and Dick's of any violation of Proposition 65 that was or could have been asserted by Davia on behalf of herself, her representatives or attorneys, against Dick's, its directors, officers, shareholders, attorneys ("Releasees"), based on their alleged failure to warn about alleged exposures to the Listed Chemical contained in the Covered Products that were sold by Dick's to California Customers before the Effective Date. As to Davia only, Dick's compliance with the terms of this settlement shall be deemed compliance with Proposition 65.

5.1.2 Davia also provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all claims, actions and causes of action, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice as to Covered Products sold by Dick's or Releasees to California Customers prior to 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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 he 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.

This Section 5 release shall not release any obligations created by or set forth in this Agreement.

The Parties further understand and agree that this Section 5 release shall not extend upstream to any entities 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 Dick's.

5.2 DICK'S RELEASE OF DAVIA

Dick's 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 through the execution of this Agreement whether in the course of investigating claims in this matter, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products that were the subject of the Notices. Dick's 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Dick's expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters identified in this Section 5.2. 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 Settlement Agreement Dick's may ask Davia, in writing, to file a complaint, incorporate the terms of this Settlement 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 Dick's 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, Dick's will reimburse Davia and her counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement 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. Dick's will remit payment to the Sheffer Law Firm, at the address set forth in Section 9 below. Such additional fees shall be paid by Dick's, within fifteen days after its receipt of any invoice from Davia for work performed under this paragraph. Dick's 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

Any failure by Dick's to timely pay Davia invoices under this Section shall result in the assessment of ten percent (10%) 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, after express agreement of the Parties, 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.

9. NOTICES

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

For Dick's Sporting Goods, Inc. and American Sports Licensing, Inc.:

Genevieve Evans
Dick's Sporting Goods, Inc.
345 Court Street
Coraopolis, PA 15108

With a copy to its counsel:

Maureen F. Gorsen
Alston & Bird
1121 L Street, Suite 700
Sacramento, Ca 95814
Maureen.Gorsen@Alston.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 prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable attorney fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. § 1021.5. Should Dick's prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Dick's may be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application upon a finding that Davia's prosecution of the motion or application lacked substantial justification. For purposes of this Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq*.

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. 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.

16. 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

Dated: September ___, 2019 _____ Genevieve Evans, Corporate Counsel Dick's Sporting Goods, Inc.	Dated: September 6, 2019 _____ Susan Davia

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.

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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

Dated: September 16, 2019 Genevieve Evans Genevieve Evans, Corporate Counsel Dick's Sporting Goods, Inc.	Dated: September___, 2019 _____ Susan Davia