

**PROPOSITION 65 SETTLEMENT AGREEMENT  
SUSAN DAVIA AG NOTICE 2018-00019**

**1. INTRODUCTION**

**1.1 The Parties**

This Settlement Agreement (“Agreement”) is entered into by and between Plaintiff Susan Davia, (“Davia” or “Plaintiff”) and Defendant Gruppo Chiarello Inc. (“Chiarello”), with Chiarello and Davia each referred to as a “Party” and collectively referred to as the “Parties.”

**1.2 Plaintiff**

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 Defendants**

For purposes of this Agreement, Chiarello represents that it 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 Chiarello manufactured, distributed and/or sold, in the State of California, certain types of copper barware and kitchenware with brass handles comprised of or made with components that exposed users to Lead without first providing “clear and reasonable warning” under Proposition 65. Lead is listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical” or “Lead.”

**1.5 Notice of Violation**

On January 11, 2018, Davia represents that she served Chiarello with a valid and compliant Proposition 65 60-Day Notice of Violation, together with a valid, requisite Certificate of Merit, that provided Chiarello and public enforcers with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of the Lead in brass-handled copper drinkware and kitchenware products sold in California.

Chiarello received the January 11, 2018, notice of violation (hereafter, “Notice”). Each Party represent that, as of the date it executes this Agreement, it believes that no public enforcer is

diligently prosecuting a Proposition 65 enforcement action related to the Listed Chemical in the covered products, as identified in the Notice.

### **1.6 No Admission**

This Agreement resolves claims that are denied and disputed by Chiarello. 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. Chiarello denies the material factual and legal allegations contained in the Notice and Action, maintains that it did not knowingly or intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered Product and otherwise contends that all 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 against interest by Chiarello 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 Chiarello of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Chiarello. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Chiarello's obligations, responsibilities, and duties under this Agreement.

## **2. DEFINITIONS**

**2.1** The term "Covered Product" means any copper or other metal barware or kitchenware with brass handles, including, but not limited to, mugs, pitchers and measuring cups except "Unique Covered Products". The term "Unique Covered Products" means Large Saute Copper Pan (SKU 751135000008) and Hammered Copper 36 cm Skillet (SKU 761135000001).

**2.2** The term "Effective Date" shall mean May 1, 2018.

**2.3** The term "Lead Free" Covered Products shall mean Covered Products made with component materials that each contain less than 200 parts per million ("ppm") Lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized by Federal or State agencies for the purpose of determining Lead content in a solid substance.

### **3. NON-MONETARY RELIEF**

#### **3.1 Formulation Commitment**

**3.1.1** Before the Effective Date, Chiarello shall provide the vendor of any Covered Product the Lead Free concentration standards of Section 2.3 and instruct its vendors not to incorporate any raw or component materials into such product, especially brass materials, that do not meet or exceed the Lead Free concentration standards of Section 2.3.

**3.1.2** After the Effective Date, should Chiarello arrange for the manufacture or other production of Covered Product with a new vendor, Chiarello shall also provide such vendor the Lead Free concentration standards of Section 2.3 and instruct such vendor not to incorporate any raw or component materials into such product, especially brass materials, that do not meet or exceed the Lead Free concentration standards of Section 2.3. For a period of three years following the Effective Date, Chiarello shall maintain copies of all testing it obtains of new vendor Covered Products demonstrating compliance with this Section 3, shall maintain copies of material vendor correspondence relating to the Lead Free standards and shall produce such copies to Davia within thirty (30) days of receipt of written request from Davia.

**3.1.3** As of the June 1, 2018, Chiarello shall not manufacture, cause to be manufactured, order or cause to be ordered any Covered Product that is not Lead Free. For every Lead Free Covered Product Chiarello manufactures, causes to be manufactured, orders or causes to be ordered after June 1, 2018, for a period of three years following the Effective Date, Chiarello shall maintain copies of all testing it obtains of such products demonstrating compliance with this section, and shall provide copies of any such testing to Davia within thirty (30) days of receipt of written request.

#### **3.2 Previously Obtained or Distributed Covered Products.**

**3.2.1** Customer Notification - no later than the Effective Date, Chiarello shall send a letter, electronic or otherwise ("Notification Letter") to: (1) each customer to whom it, after January 1, 2018, supplied any Covered Product or Unique Covered Product and for which customer Chiarello maintains an associated address. The Notification Letter shall advise the recipient that the brass components of each Covered Product and Unique Covered Product contain Lead, a chemical known to the State of California to cause birth defects and other

reproductive harm. The Notification Letter shall list each specific Covered Product and Unique Covered Product, by store description, size and any store identification number that are the subject of the warning advice. The Notification letter shall offer to accept return of any Covered Product or Unique Covered Product in exchange for a full refund.

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

### **3.3 Chiarello Warning Obligations**

As of the Effective Date, for any Covered Product manufactured or ordered by or for Chiarello before June 1, 2018, Chiarello shall not sell such Covered Product unless such Covered Product is Lead Free pursuant to Section 2.3 or is sold with one of the clear and reasonable warnings set forth hereafter. As of the Effective Date, Chiarello shall not sell any Unique Covered Product unless such Covered Product is Lead Free pursuant to Section 2.3 or is sold with one of the clear and reasonable warnings set forth hereafter. Each warning 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 *before* purchase or use. Each warning shall be provided in a manner such that the consumer or user understands to which *specific* Covered Product the warning applies, so as to minimize the risk of consumer confusion.

Chiarello shall provide the warning affixed to the packaging or labeling using one of the warning statements below:

**WARNING:** This product contains Lead, a chemical 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 Lead, that are known to the State of California to cause cancer and birth defects or other reproductive harm;

or

Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)." accompanied by and placed to the right of a symbol consisting of

a black exclamation point in a yellow equilateral triangle with a bold black outline sized to be no smaller than the word, "WARNING"

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

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

As a condition of settlement of all the claims referred to in this Consent to Judgment, Chiarello shall pay a total of \$3,000 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, 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, plaintiff discovers and presents to Chiarello evidence that any type of Covered Product has been distributed by Chiarello in sales volumes materially different than those identified by such Chiarello prior to execution of this Agreement, then such misrepresenting Chiarello shall be liable for an additional penalty amount of up to \$10,000 for Covered Product sold prior to execution of this Agreement but not identified by such defendant to plaintiff. Chiarello shall also be liable for any reasonable, additional attorney fees expended by plaintiff in discovering applicable additional retailers or sales for such defendant, up to a maximum of \$10,000.

Plaintiff agrees to provide Chiarello with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Chiarello shall have thirty (30) days to agree to the amount of fees and penalties owing (subject to the above caps in any event) and submit such payment to plaintiff in accordance with the method of payment of penalties and fees identified in Sections 4.4 and 4.5. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, plaintiff shall be entitled to file a formal legal claim for civil penalties pursuant to this section and shall be entitled to all reasonable attorney fees and costs relating to such claim.

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

Under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, Chiarello shall pay the amount of \$23,500 for

fees and costs incurred investigating, litigating and enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and executing this Agreement in the public interest (except fees that may be incurred on appeal, if any).

#### **4.4 Payment Timing**

Chiarello shall deliver all settlement payment checks or funds required by Sections 4.1 and 4.3 of this Agreement to plaintiff within ten (10) business days of the date that this Agreement is fully executed by the Parties. Chiarello shall deliver the settlement payments or checks to plaintiff's counsel as follows:

1. a civil penalty check in the amount of \$2,250 payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2018-00019");
2. a civil penalty check in the amount of \$750 payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2018-00019"); and
3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the amount of \$23,500 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2018-00019")

Chiarello shall deliver all payments required by Sections 4.2 of this Agreement to Davia and the Sheffer Law firm in the amounts and on the date agreed to by counsel under Section 4.2 or as ordered by the Court.

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

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

Chiarello 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.

## **5. CLAIMS COVERED AND RELEASE**

### **5.1 Davia's Releases of Chiarello**

**5.1.1** Plaintiff, on behalf of herself, her attorneys, successors, and/or assignees releases Chiarello and each of its attorneys ("Defendant Releasees") from any and all claims for

violation of Proposition 65 that have or could have been asserted against Defendant Releasees regarding the failure to warn about exposure to the Listed Chemical arising in connection with any Covered Product or Unique Covered Product distributed or otherwise sold by Chiarello prior to the Effective Date. Chiarello's compliance with this Agreement shall constitute compliance with Proposition 65 with respect to the Listed Chemical in the Covered Products as set forth in the Notice.

## **5.2 Chiarello's Release of Davia**

**5.2.1** Chiarello waives any and all claims against Davia, 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 or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Covered Products.

## **5.3 General Release**

**5.3.1** Each Party also provides, for the benefit of the other Party and Defendant Releasees, 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 any Party of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of Chiarello's sale of the Covered Products prior to the Effective Date. Each Party 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.

Each Party expressly waives and relinquishes any and all rights and benefits that 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. 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. SEVERABILITY**

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

## **7. GOVERNING LAW**

The terms of this Agreement shall be governed by the laws of the State of California. For purposes of this Agreement only, the Parties also stipulate that that venue is proper in County of Marin, and that the Marin County Superior Court has jurisdiction to enter and enforce the provisions of this Agreement as if it were entered pursuant to C.C.P. §664.6.

## **8. NOTICES**

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

For Gruppo Chiarello Inc.:

Michael Chiarello, President  
Gruppo Chiarello Inc.  
6525 Washington Street, Suite D-2B  
Yountville, CA 94599

With copy to their counsel at:

Sandra A. Edwards  
Farella Braun + Martel LLP  
235 Montgomery Street 17<sup>th</sup> FL  
San Francisco, CA 94104  
sedwards@fbm.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.



**9. 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).

**10. MODIFICATION**

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

**11. ENTIRE AGREEMENT**

This Settlement 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

**12. ATTORNEY'S FEES**

**12.1** Should any Party prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, such Party shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application, if allowed, under C.C.P. §1021.5. However, nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

**13. 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.

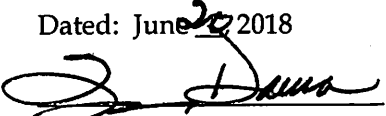
**14. COUNTERPARTS, FACSIMILE SIGNATURES**

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.

**15. 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: June <u>20</u>, 2018</p>  <p>Susan Davia</p>	<p>Dated: June __, 2018</p> <hr/> <p>David O'Malley, Chief Operating Officer Gruppo Chiarello Inc.</p>	
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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.

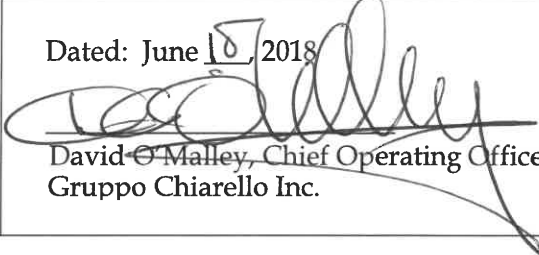
**14. COUNTERPARTS, FACSIMILE SIGNATURES**

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.

**15. 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: June __, 2018</p> <p>_____</p> <p>Susan Davia</p>	<p>Dated: June 18, 2018</p> <p></p> <p>David O'Malley, Chief Operating Officer Gruppo Chiarello Inc.</p>
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