

**PROPOSITION 65 SETTLEMENT AGREEMENT  
SUSAN DAVIA AG NOTICE 2018-02197**

**1. INTRODUCTION**

**1.1 The Parties**

This Settlement Agreement ("Agreement") is entered into by and between Susan Davia, ("Davia") and Shinola/Detroit LLC ("Shinola"), with Davia and Shinola 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 Shinola**

For purposes of this Agreement only, Shinola 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 Shinola manufactured, distributed and/or sold, in the State of California, certain types of pens and pen accessories made with brass 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 December 6, 2018, Davia represents that she served Shinola with a valid and compliant Proposition 65 60-Day Notice of Violation, together with a valid, requisite Certificate of Merit, that provided Shinola 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 the brass pens and accessories sold in California (hereafter, "Notice").

Shinola received the Notice. Each Party 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 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 Shinola. 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. Shinola 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 Shinola of any fact, finding, issue of law, or violation of law. Shinola's compliance with this Agreement shall not constitute or be construed as an admission by Shinola of any fact, finding, conclusion, issue of law, or violation of law, all such being specifically denied by Shinola. Notwithstanding the foregoing, this section shall not diminish or otherwise affect Shinola's obligations, responsibilities, and duties under this Agreement.

**2. DEFINITIONS**

**2.1** The term "Covered Product" means any pen or pen accessory with brass components, including, but not limited to, Tactile Turn Pen and Chen Chen Kai & Williams brass pen and base.

**2.2** The term "Effective Date" shall mean June 1, 2019.

**2.3** The term "Lead Free" Covered Products shall mean any brass component of any Covered Product that contains less than 100 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.

**2.4** The term "California Customer" shall mean any customer in a California Shinola retail store or any e-commerce customer with a California ship to address.

**3. INJUNCTIVE-TYPE RELIEF**

**3.1 Product Reformulation Commitment**

**3.1.1** As of the Effective Date, Shinola shall provide the vendor of any Covered Product the Lead Free concentration standards of Section 2.3 and instruct such vendor to meet the Lead Free concentration standards of Section 2.3 for any Covered Product Shinola makes available for sale to a California Customer.

**3.1.2** After the Effective Date, should Shinola arrange for the manufacture, production or other distribution of Covered Product with a new vendor, Shinola shall provide such vendor the Lead Free concentration standards of Section 2.3 and instruct such vendor to meet the Lead Free concentration standards of Section 2.3 for any Covered Product Shinola makes available for sale to a California Customer. For a period of two (2) years following the Effective Date, Shinola shall maintain copies of all testing it obtains of new vendor Covered Products, if any, 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 July 1, 2019, Shinola 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 Shinola manufactures, causes to be manufactured, orders or causes to be ordered after July 1, 2019, Shinola shall maintain, for a period of two years following the Effective Date, copies of all testing it obtains of such products, if any, demonstrating compliance with this section and shall provide copies of any such testing to Davia within thirty (30) days of receipt of written request. Davia agrees that such requests shall be reasonable, and will not be made more than once in 2019, and once annually thereafter, absent good cause.

### **3.3 Shinola Warning Obligations**


Commencing on the Effective Date, for any Covered Product manufactured or ordered by or for Shinola before July 1, 2019, Shinola 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. 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.


(a) **Covered Product Labels.** All non-Lead Free Covered Products sold or otherwise distributed shall have a warning label attached to the Covered Product. The warning label shall be no smaller than the largest type size used for other consumer information on the product and in no case smaller than 6-point type, and shall contain one of the following statements:

 **WARNING:** This product can expose you to chemicals, including Lead, 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](http://www.P65Warnings.ca.gov);


or

 **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

(b) **Mail Order Catalog Warning.** For all mail order catalogs printed by or for Shinola after six (6) months from the Effective Date, Shinola must include a warning associated with reference to each Covered Product. Each warning provided in such catalog must be in the same type size or larger than the Covered Product description text within the catalog. 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:


 **WARNING:** This product can expose you to chemicals, including Lead, 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](http://www.P65Warnings.ca.gov)

or

 **WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

This latter, "short form" warning may only be used in a mail order catalog pursuant to Section 3.3(b) if the Covered Product to which it refers also includes the same warning on the actual product or immediate product packaging when delivered to the purchasing customer.

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Covered Product, Shinola may utilize a designated symbol to cross reference the applicable warning and shall define the term "designated symbol" with the following language on the inside of the front or back cover of the catalog or on the same page as any order form for the Covered Product(s):

 **WARNING:** Certain products identified with this symbol ▼ can expose you to chemicals, including Lead, that are is 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](http://www.P65Warnings.ca.gov)

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

If Shinola elects to provide warnings in any mail order catalog, then the warnings must be included in all catalogs offering to sell one or more Covered Products in California.

(c) **Internet Website Warning.** After the Effective Date, a warning must be given on an e-commerce or other website owned or operated by or for Shinola in conjunction with the sale, or offer of sale, of any Covered Product to a California Customer. A warning will satisfy this requirement if it appears 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, or one that otherwise complies with 27 CCR § 25603, 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 for which it is given in the same type size or larger than the Covered Product description text:

**⚠ WARNING:** This product can expose you to chemicals, including Lead, 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](http://www.P65Warnings.ca.gov)

or

**⚠ WARNING:** Cancer and Reproductive Harm  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

This latter, "short form" warning may only be used on an internet website pursuant to Section 3.3(c) if the Covered Product to which it refers also includes the same warning on the actual product or immediate product packaging when delivered to the purchasing customer.

#### 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, Shinola shall pay a total of \$3,200 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 Davia of the California sales data, which was contained in the email from Jerome Pierce to Davia's counsel on March 22, 2019. If within six (6) months of the Effective Date, plaintiff discovers and presents to Shinola evidence that any type of Covered Product has been distributed by Shinola in sales volumes materially different than those identified by such Shinola prior to execution of this Agreement in the March 22, 2019 electronic mail message to counsel for Susan Davia, then Shinola shall be liable for an additional penalty amount of up to \$10,000 total for Covered Products sold prior to execution of this Agreement but not identified by such defendant to plaintiff. Shinola 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 Shinola with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Shinola 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 Section 4.4. 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 breach of this contract 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, Shinola shall pay the amount of \$22,750 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**

Shinola 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. Shinola shall deliver the settlement payments or checks to plaintiff's counsel as follows:

1. a civil penalty check in the amount of \$2,400 payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2018-02197");
2. a civil penalty check in the amount of \$800 payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2018-02197"); and
3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the amount of \$22,750 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2018-02197")

Shinola 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

Shinola 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 timely transmitted to Sheffer Law Firm in a manner intended to result in receipt 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 Shinola**

**5.1.1** This Settlement Agreement is a full, final, and binding resolution between Plaintiff, on behalf of herself, her attorneys, successors, and/or assignees, on the one hand, and (a) Defendant, its owners, parents, subsidiaries, affiliates, sister and related companies, employees, shareholders, members, officers, directors, insurers, agents, attorneys, predecessors, successors, and assigns (collectively the "Releasees") and (b) all entities to whom Releasees directly or indirectly provide, distribute, or sell the Covered Products ("Downstream Releasees") on the other hand, of any violation(s) or claimed violation(s) of Proposition 65 or any statutory or common law claim that has been, could have been asserted against the Releasees and/or Downstream Releasees regarding exposing persons to the Listed Chemical and the failure to warn about exposure to the Listed Chemical arising in connection with the Covered Products manufactured, shipped, and/or otherwise distributed by Shinola prior to the Effective Date, even if sold by Downstream Releasees after the Effective Date. The Parties agree that compliance with the terms of this Settlement Agreement by Defendant shall be deemed to be compliance with Proposition 65 by Releasees and Downstream Releasees with respect to any exposures to the Listed Chemical in the Covered Products manufactured, distributed, or sold by Defendant after the Effective Date.

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

**5.2.1** Shinola 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, 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 Shinola'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 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.

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, 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 venue is proper in County of Marin, and that the Marin County Superior Court has jurisdiction to enforce the provisions of this Agreement as if it were entered pursuant to C.C.P. §664.6 and to consider any dispute arising out of this Agreement.

## **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 Shinola/Detroit LLC:

Shannon Washburn, President  
Shinola/Detroit LLC  
485 W. Milwaukee St.  
Detroit, Michigan 48202

With copy to their counsel at:

Stephanie A. Sheridan, Esq.  
Steptoe & Johnson, LLP  
One Market Street  
Spear Tower 39th Floor  
San Francisco, CA 94105  
[ssheridan@steptoe.com](mailto:ssheridan@steptoe.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 along with a successful motion of any party and approval of the 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.

## **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.


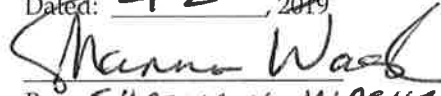
## **14. COUNTERPARTS, FACSIMILE SIGNATURES**

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

IT IS SO AGREED

<p>Dated: <u>JAN. 27</u>, <del>2019</del> <sup>2020</sup></p> <p></p> <p>Plaintiff Susan Davia</p>	<p>Dated: <u>2/2</u>, <del>2019</del> <sup>2020</sup></p> <p></p> <p>By: <u>SHANNON WASHBURN</u> Its: <u>CEO &amp; President</u> Shinola/Detroit LLC</p>
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