

**PROPOSITION 65 SETTLEMENT AGREEMENT
(Susan Davia AG Notice 2019-00589)**

1. INTRODUCTION

1.1 The Parties

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Susan Davia (“Davia”), on the one hand, and Meridian International Co., Ltd. USA (“Meridian” or “Defendant”), on the other hand, with Davia and Meridian 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 Meridian

Meridian International Co., Ltd. USA 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 Meridian participated in the manufacture, distribution and/or sale, in the State of California, of pliers and hand tools made with vinyl grips that exposed users to di(2-ethylhexyl)phthalate (“DEHP”) without first providing a “clear and reasonable warning” under Proposition 65. DEHP is listed as a carcinogen and reproductive toxin pursuant to Proposition 65. DEHP shall be referred to hereinafter as the “Listed Chemical”.

1.5 Notices of Violation

On March 27, 2019, Davia served Meridian 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 purportedly failing to warn consumers of the presence of the Listed Chemical found in the Covered Products (defined hereafter)

sold in California (AG Notice 2019-00589). The March 27, 2019, 60-Day Notice of Violation served on Meridian shall be referred to herein as “Notice.”

Meridian received the Notice. Meridian 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 Meridian. 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. Meridian denies the material factual and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered Products (defined hereafter) and further 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 Meridian 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 Meridian of any fact, finding, conclusion, issue of law, or violation of law, all of which are specifically denied by Meridian. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Meridian’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 Meridian as to the allegations in the Notice received from Davia, and this Agreement, that venue is proper in County of Marin, and that the Marin County Superior Court has jurisdiction over the Parties in any action to enforce the provisions of this Agreement.

2. DEFINITIONS

2.1 The term “Product” or “Covered Product” shall mean all pliers and hand tools made with vinyl grips manufactured and/or distributed by Meridian, Lil’ Drug Store Products, Inc. or Lil’ Auto Store, Inc., including, but not limited to LA-041 Slip Joint Pliers.

2.2 The term “Phthalate Free” Covered Product shall mean that each vinyl 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 test results using Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C.

2.3 The term “California Customer” shall mean shall mean any customer located in California, any customer with a California ship to address, any customer that Meridian reasonably understands operates a retail store in California and any ecommerce customer that Meridian reasonably understands sells to consumers in California.

2.4 “Effective Date” shall mean June 30, 2019.

3. INJUNCTIVE-TYPE RELIEF

3.1 Product Reformulation Commitment

3.1.1 No later than the Effective Date, Meridian shall provide the Phthalate Free phthalate concentration standards of Section 2.2 to any then-current vendor of any Covered Product, and instruct such entity not to provide any Covered Product that does not meet the Phthalate Free concentration standards of Section 2.2. Meridian shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards for two (2) years after the Effective Date and shall produce such copies to Davia within fifteen (15) days of receipt of reasonable request made in writing from Davia.

3.1.2 After the Effective Date, Meridian shall provide the Phthalate Free phthalate concentration standards of Section 2.2 to any New Vendor of any Covered Product and instruct such entity not to provide any Covered Product that does not meet the Phthalate Free concentration standards of Section 2.2. “New Vendor” means any vendor of Covered Products from whom Meridian


was not obtaining Covered Products as of the Effective Date. Prior to purchase and acquisition of any Covered Product from any New Vendor, Meridian shall obtain written confirmation and laboratory test result from the New Vendor demonstrating compliance with the Phthalate Free phthalate concentration standard for any Covered Product. For two (2) years after the Effective Date, for every Covered Product Meridian manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from a New Vendor, Meridian shall maintain copies of all testing of such products demonstrating compliance with this section, 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 reasonable request made in writing from Davia.

3.1.3 As of July 30, 2019, Meridian shall not distribute any Covered Product to a California Customer that is not Phthalate Free. For every Covered Product Meridian distributes to a California Customer after the Effective Date, Meridian shall, for a period of two (2) years after placing the order, maintain copies of all testing of such products demonstrating compliance with this section, shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards of Section 2.2 and shall produce such copies to Davia within fifteen (15) days of receipt of reasonable request made in writing from Davia.


3.2 Previously Distributed Covered Products.

3.2.1 Customer Notification - No later than the Effective Date, Meridian shall send a letter, electronic or otherwise ("Notification Letter") to: (1) each retailer or distributor in California to which it, after January 1, 2018, supplied any Covered Product, and (2) any other retailer or distributor in California to which Meridian has sold any Covered Product and that Meridian reasonably understands or believes has any inventory of Covered Products. The Notification Letter shall advise the recipient that Covered Products contains DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. The Notification letter shall inform the recipient that all Covered Product must either have a label attached to the packaging or on a shelf sign proximate to the

display of Covered Product expressly referring to the Covered Product, which label or sign contains one of the following warnings, before it is sold in the California market or to a California customer:

 **WARNING:** This product can expose you to chemicals, including di(2-ethylhexyl)phthalate, which 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;

or

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

The Notification Letter shall be sent with return receipt requested. The Notification Letter shall request written confirmation from the recipient, within 15 days of receipt, that all such inventory for California sale has been, or will be, labelled with the warning language identified in this section.


3.2.2 Meridian shall maintain records of compliance correspondence, inventory reports or other communication confirming compliance with § 3.2.1 for two (2) years from the Effective Date and shall produce copies of such records upon reasonable written request by Davia.

3.3 Existing Inventory Product Labels


For any inventory of Covered Products ordered by Meridian before July 30, 2019, Meridian shall not sell or ship any of such Covered Product unless Meridian either has confirmation that the product meets the Phthalate Free requirements of Section 2.2 or Meridian has complied with all warning requirements set forth in this Section 3.3.

3.3.1 Covered Product Label.

For all Covered Products with non-Phthalate Free grips sold into California, to a California customer, or to any entity that Meridian has reason to know will sell the Covered Product into California or to a California customer, Meridian shall affix a label to the Covered Product or its immediate packaging that states:

 **WARNING:** This product can expose you to chemicals, including di(2-ethylhexyl)phthalate, which 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;

or

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

The label shall be prominently affixed 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.

3.3.2 Internet Website Warning.

Meridian represents, as a material term of this Agreement, that it does not currently sell Covered Products direct to consumers via an ecommerce website. In such case as Meridian commences direct sales of any Covered Product that is not Phthalate Free to consumers via an ecommerce website, then Meridian shall include one of the warning messages from Section 3.3.1 in conjunction with such sale, provided 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.

4. MONETARY PAYMENTS

4.1 Civil Penalty

As a condition of settlement of all the claims referred to in this Settlement Agreement, Meridian shall cause to be paid a total of \$5,200 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, Davia is relying entirely upon

Meridian and its counsel for accurate, good faith reporting to Davia of the nature and amounts of sales activity of the Covered Products. If within nine (9) months of the Effective Date, Davia discovers and presents to Meridian evidence that the Covered Products have been distributed in California by Meridian in sales volumes materially different (more than 25%) than those identified by Meridian prior to execution of this Agreement, then Meridian shall be liable for an additional penalty amount of \$10,000.00. Meridian shall also pay reasonable, additional attorney fees expended by Davia in discovering such additional sales and reporting them to Meridian in accordance with this section. Davia agrees to provide Meridian with a written demand for such additional penalties and attorney fees under this Section. After service of such demand, Meridian shall have thirty (30) days to pay the additional civil penalties amount demanded or negotiate with Davia as to an agreed amount of fees and penalties to be paid in accordance with the method of payment of penalties and fees identified in Section 4.4. Should the parties dispute whether Davia has provided appropriate evidence of “sales volumes materially different (more than 25%) than those identified by Meridian prior to execution of this Agreement”, then the parties shall have the issue decided by a mutually agreed upon Mediator, each side to bear its own costs of the mediation. Should mediation not be successful in resolving the matter then, within thirty (30) days of the mediation, Davia shall be entitled to file an action for breach of this Agreement in which the sole issues for resolution by the Court shall be: (1) whether Covered Products were distributed in California by Meridian in sales volumes materially different (more than 25%) than those identified by Meridian prior to execution of this Agreement; and (2) if the Court finds in favor of Davia on issue no. 1, the amount of legal fees, if any, Davia is entitled to recover for discovering the additional sales and reporting them to Meridian in accordance with this section. In any action brought under this Section 4.2, the prevailing party shall be entitled to recover its attorney’s and other fees and costs.

4.3 Reimbursement of Davia’s Fees and Costs

The Parties acknowledge that Davia and her counsel refused to consider any reimbursement of plaintiff’s fees or costs until all other terms of the settlement were reached. The Parties then reached an

accord on the reimbursement due to Davia and compensation of her counsel under general contract principles and consistent with the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, in the amount of \$33,000 for fees and costs incurred investigating and negotiating a resolution of this matter. Such payment shall be made payable to "Sheffer Law Firm".

4.4 Payment Procedures

Meridian shall satisfy its obligation to pay civil penalties pursuant to Section 4.1 by delivery of a check payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2018-00026") in the amount of 75% of the civil penalties provided in Section 4.1 (\$3,900) and a separate check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2018-00026") in the amount of 25% of the civil penalties provided in Section 4.1 (\$1,300). Davia shall be responsible for delivering to the California Office of Environmental Health Hazard Assessment the civil penalty check payable to OEHHA.

Meridian 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 "2018-00026") in the amount of \$33,000.

Meridian shall satisfy its obligation to pay civil penalties pursuant to Section 4.2 by issuing checks payable to "OEHHA" and "Susan Davia" (Memo line "Prop 65 Penalties, 2018-00026"), in the amounts agreed to pursuant to Section 4.2 or as ordered by the Court.

Meridian 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 "2018-00026"), 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 Davia's counsel within ten (105) business days after execution of this Agreement, 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 address set forth above on or before the date agreed upon by the parties pursuant to that section or ordered by the Court.

Meridian 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 five business days of the due date for such payment.

4.5 Issuance of 1099 Forms

After this Agreement has been executed and funds have been transmitted to Davia's counsel at the address set forth in Section 4.4., Meridian 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 (if any);
- (b) The second 1099 shall be issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2 (if any), whose address and tax identification number shall be provided to Meridian prior to any payments being due under this Agreement; 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 (if any).

5. RELEASES

5.1 DAVIA'S RELEASE OF MERIDIAN

5.1.1 This settlement agreement is a full, final and binding resolution between Davia, and Meridian of any violation of Proposition 65 that was or could have been asserted by Davia on behalf of herself, her representatives or attorneys, against Meridian, its directors, officers, employees, attorneys, parents and each entity to whom Meridian directly or indirectly distributes or sells Covered Products, including, but not limited to Lil' Drug Store Products, Inc. and its dba Lil' Auto Store, Inc. ("Releasees"), based on their alleged failure to warn about alleged exposures to the Listed Chemical

contained in the Covered Products that were sold by Meridian into California before the Effective Date. As to Davia only, Meridian's compliance with the terms of this Agreement shall constitute compliance with Proposition 65 as to exposures to DINP, DIDP, DEHP, DBP, BBP and DnHP in the Covered Products.

5.1.2 Davia also provides a general release and waiver which shall be effective as a full and final accord and satisfaction, and 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 and the Covered Products to the extent sold or distributed by Meridian prior to the Effective Date, and for all actions taken and statements made (or that could have been taken or made) by Meridian and its attorney's and other representatives in connection with negotiating this Agreement. 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 she 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, other than Meridian, that manufactured any Covered Product or any component parts thereof,

or any distributors or suppliers who sold Covered Products or any component parts thereof to Meridian.

5.2 MERIDIAN RELEASE OF DAVIA

Meridian, on behalf of itself and its 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 arising out of the subject matter of the Notice and the Covered Products, whether in the course of investigating claims in this matter, otherwise seeking to enforce Proposition 65 against Meridian and Releasees in this matter, or negotiating this Agreement. Meridian 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.

Meridian 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.

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

6. SEVERABILITY

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity

of other provisions of this Agreement, upon express consent of all Parties, shall not be affected and shall remain in full force and effect.

7. GOVERNING LAW

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

8. 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 Meridian:

Tony Kriz, President
Meridian International Co., Ltd. USA
7442 S. Tucson Way, Suite 120A
Centennial, CO 80112

For Meridian's Counsel:

Ryan Landis
Polsinelli, LLP
2049 Century Park East, Suite 2900
Los Angeles, CA 90067
rlandis@polsinelli.com

For Davia:

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 of California Health & Safety Code §25249.7(f).

10. MODIFICATION

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

11. 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 or relied on by any Party hereto (other than the sales figures provided to Davia). 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 In any dispute concerning any matter related to this Agreement, the prevailing Party shall be entitled to recover its costs and expenses, including attorneys' fees and costs. Except as otherwise specifically provided herein, each Party shall bear its own costs and attorney's fees in connection with the Notices. Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

13. NEUTRAL CONSTRUCTION

This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by each of the Parties. 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. The Parties further agree that the section headings are for convenience only and shall not affect interpretation of this Agreement.

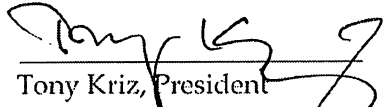
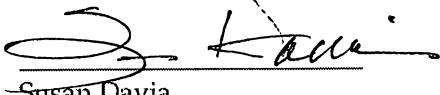
14. COUNTERPARTS, FACSIMILE SIGNATURES

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. Signatures by scanned and e-mailed image or facsimile transmission shall have the same force and effect as original signatures and as an electronic record executed and adopted by a Party with the intent to sign the electronic record pursuant to Civil Code §§ 1633.1 *et seq.*

15. AUTHORIZATION

Each of the persons signing this agreement represents and warrants that he or she is authorized and has the capacity to execute this Agreement on behalf of the respective Party and has read, understood, and agrees to all of the terms and conditions of this Agreement on behalf of such Party.

IT IS SO AGREED

<p>Dated: July <u>19</u>, 2019</p>  <p>Tony Kriz, President Meridian International Co., Ltd. USA</p>	<p>Dated: July <u>23</u>, 2019</p>  <p>Susan Davia</p>
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