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SUSAN DAVIA

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

SUSAN DAVIA,

Plaintiff,

v.

PAUL H. GESSWEIN & CO., INC. AND
DOES 1-150,

Defendants.

Case No. CIV2103854

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This settlement agreement ("Agreement" or "Settlement Agreement") is entered into by and
4 between noticing party Susan Davia ("Davia") and noticed parties Paul H. Gesswein & Co., Inc.
5 (hereafter, "Gesswein"), with Davia and Gesswein each referred to as a "Party" and collectively
6 referred to as the "Parties."

7 **1.2 Davia**

8 Davia is an individual residing in the State of California who seeks to promote awareness of
9 exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
10 substances contained in consumer products.

11 **1.3 Gesswein**

12 Paul H. Gesswein & Co., Inc. is a person in the course of doing business for purposes of the
13 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§
14 25249.6 *et seq.* ("Proposition 65").

15 **1.4 General Allegations**

16 Davia alleges that Gesswein is responsible for the design, manufacture, distribution and/or
17 sale, in the State of California, of hand tools and tool kit case products made with vinyl components
18 that expose users to di(2-ethylhexyl)phthalate ("DEHP"), di-isodecyl phthalate ("DIDP") and
19 diisononyl phthalate ("DINP") without first providing "clear and reasonable warning" under
20 Proposition 65. Pursuant to Proposition 65, DEHP is listed as a developmental toxin and
21 carcinogen, DIDP is listed as a developmental toxin and DINP is listed as a carcinogen. DEHP,
22 DIDP and DINP shall be collectively referred to hereinafter as "Listed Chemical."

23 **1.5 Notices of Violation**

24 On May 24, 2021, Davia also served Gesswein and various public enforcement agencies with
25 a document entitled "60-Day Notice of Violation" that provided public enforcers and the noticed
26 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
27 consumers of the presence of lead and lead compounds in brass jewelry and craft tools sold in
28 California (AG Notice 2021-01182).

1 On June 25, 2021, Davia also served Gesswein and various public enforcement agencies with
2 a document entitled "60-Day Notice of Violation" that provided public enforcers and the noticed
3 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
4 consumers of the presence of DEHP, DIDP and DINP found in hand tools and tool kit cases with
5 vinyl components sold in California (AG Notice 2021-01493).

6 This May 24, 2021, and June 25, 2021, Notices of Violation shall hereafter be collectively
7 referred to as "Notice." Gesswein represents that, as of the date it executes this Agreement, it is not
8 aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action
9 related to DEHP, DIDP, DINP or lead in the Covered Products (hereafter defined), as identified in
10 the Notice.

11 **1.6 Complaint**

12 On November 10, 2021, Davia filed a Complaint in the Superior Court of the State of
13 California for the County of Marin, Case No. CIV2103854, alleging violations by Defendants of
14 Health and Safety Code § 25249.6 based on the alleged exposures to DEHP, DIDP, DINP and lead
15 from the Covered Products. (the "Action").

16 **1.7 No Admission**

17 This Agreement resolves claims that are denied and disputed by Gesswein. The Parties
18 enter into this Agreement pursuant to a full and final settlement of any and all claims between the
19 Parties for the purpose of avoiding prolonged litigation. Gesswein denies the material factual and
20 legal allegations contained in the Notice, maintains that it did not knowingly or intentionally
21 expose California consumers to the Listed Chemical through the reasonably foreseeable use of the
22 Covered Products and otherwise contends that, all Covered Products it has manufactured,
23 distributed and/or sold in California have been and are in compliance with all applicable laws and
24 regulations, including Proposition 65. Nothing in this Agreement shall be construed as an
25 admission by Gesswein of any fact, finding, issue of law, or violation of law, nor shall compliance
26 with this Agreement constitute or be construed as an admission by Gesswein of any fact, finding,
27 conclusion, issue of law, or violation of law, such being specifically denied by Gesswein. However,
28 notwithstanding the foregoing, this section shall not diminish or otherwise affect Gesswein's

1 obligations, responsibilities, and duties under this Agreement.

2 **1.8 Consent to Jurisdiction**

3 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
4 Court has jurisdiction over Gesswein as to this Agreement, that venue for any action to enforce this
5 Agreement is proper in County of Marin and that this Agreement is made pursuant to Code of
6 Civil Procedure Section 664.6.

7 **2. DEFINITIONS**

8 **2.1** "Lead Covered Product" shall mean all brass jewelry and craft tools sold by
9 Gesswein in California, including but not limited to Brass Pin Vise 820-4300 and Brass Sliding
10 Caliper 813-1200.

11 **2.2** "Phthalate Covered Product" shall mean all hand tools and tool kit cases made with
12 vinyl components sold by Gesswein in California, including but not limited to Economy Plier, Set 4
13 Ylw 180-0360 case (clear and blue material), Economy Plier, Set 4 Ylw 180-0360 pliers, Value Line
14 Round Nose Plier 180-0342, Economy Stone Setting Plier 181-2950, Foam Grip Bent Chain Nose
15 Plier 180-0336, Foam Grip Bent Chain Nose Plier 180-0336, Value Line Flat Nose Plier 180-0341.

16 **2.3** Lead Covered Product and Phthalate Covered Product shall be collectively referred
17 to herein as "Covered Product" when used without a "Lead" or "Phthalate" qualification.

18 **2.4** "Lead Free" Lead Covered Products shall mean any brass component of any Lead
19 Covered Product that contains less than 100 parts per million ("ppm") Lead when analyzed
20 pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized by
21 Federal or State agencies for the purpose of determining Lead content in a solid substance

22 **2.5** "Phthalate Free" Phthalate Covered Products shall mean any accessible component
23 of any Covered Product contains less than or equal to 1,000 parts per million ("ppm") of DEHP,
24 DINP, di-n-butyl phthalate ("DBP"), di-isodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP")
25 and butyl benzyl phthalate ("BBP") as determined by a minimum of duplicate quality controlled
26 test results using Environmental Protection Agency ("EPA") testing methodologies 3580A and
27 8270C or equivalent methodologies utilized by federal or state agencies to determine the presence
28 and measure the quantity of phthalates in solid substances.

1 **2.6** "California Customer" shall mean any direct customer of Gesswein who provided a
2 California delivery or billing address to Gesswein as part of any Covered Product purchase
3 transaction.

4 **2.7** "Effective Date" shall mean February 1, 2024.

5 **3. INJUNCTIVE-TYPE RELIEF**

6 **3.1 Products No Longer in Gesswein's Control**

7 No later than the Effective Date, Gesswein shall send a letter, electronic or otherwise
8 ("Notification Letter") to any California Customer to whom Gesswein sold more than 10 units of
9 any Covered Product after April 1, 2019, and which California Customer Gesswein reasonably
10 believes still has inventory of any such Covered Product not already labelled with a warning
11 substantially similar to that required by Section 3.3. For customers purchasing any Lead Covered
12 Product, the Notification Letter shall advise the recipient that Covered Products "have been tested
13 for the presence of and found to contain lead, a chemical known to the State of California to cause
14 cancer and reproductive harm." For customers purchasing any Phthalate Covered Product, the
15 Notification Letter shall advise the recipient that Covered Products "have been tested for the
16 presence of phthalates and found to contain DEHP, DIDP and/or DINP, chemicals known to the
17 State of California to cause cancer and reproductive harm." For customers purchasing both Lead
18 Covered Product and Phthalate Covered Product, the Notification Letter shall advise the recipient
19 that Covered Products "have been tested for the presence of lead and phthalates and found to
20 contain lead and DEHP, DIDP and/or DINP, chemicals known to the State of California to cause
21 cancer and reproductive harm." Any Notification Letter shall advise the customer to place
22 appropriate Proposition 65 warnings on the product prior to sale in California.

23 **3.2 Product Reformulation Commitment**

24 **3.2.1** No later than the Effective Date, Gesswein shall provide the Lead Free concentration
25 standards of Section 2.4 to its then-current vendors or manufacturers of any Lead Covered Product
26 and request such entities not to incorporate any raw or component materials that do not meet the
27 Lead Free concentration standards of Section 2.4 into any Lead Covered Product. Gesswein shall
28 maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards

1 for a period of two (2) years after the Effective Date and shall produce such copies to Davia within
2 fifteen (15) days of receipt of written request from Davia.

3 **3.2.2** After the Effective Date, Gesswein shall provide the Lead Free concentration
4 standards of Section 2.4 to any new vendors or manufacturers of any Lead Covered Product and
5 request such entities not to incorporate any raw or component materials that do not meet the Lead
6 Free concentration standards of Section 2.4 into any Lead Covered Product. For every Lead
7 Covered Product Gesswein manufactures, causes to be manufactured, orders, causes to be ordered
8 or otherwise obtains from a new vendor after the Effective Date, Gesswein shall maintain copies of
9 any report of testing of such products it receives, if any, shall maintain copies of all vendor
10 correspondence relating to the Lead Free concentration standards for a period of two (2) years after
11 the Effective Date and shall produce such copies to Davia within fifteen (15) business days of
12 receipt of written request from Davia.

13 **3.2.3** No later than the Effective Date, Gesswein shall provide the Phthalate Free
14 concentration standards of Section 2.5 to its then-current vendors or manufacturers of any Phthalate
15 Covered Product and request such entities not to incorporate any raw or component materials that
16 do not meet the Phthalate Free concentration standards of Section 2.2 into any Phthalate Covered
17 Product. Gesswein shall maintain copies of all vendor correspondence relating to the Phthalate
18 Free concentration standards for a period of two (2) years after the Effective Date and shall produce
19 such copies to Davia within fifteen (15) days of receipt of written request from Davia.

20 **3.2.4** After the Effective Date, Gesswein shall provide the Phthalate Free concentration
21 standards of Section 2.2 to any new vendors or manufacturers of any Phthalate Covered Product
22 and request such entities not to incorporate any raw or component materials that do not meet the
23 Phthalate Free concentration standards of Section 2.2 into any Phthalate Covered Product. For
24 every Phthalate Covered Product Gesswein manufactures, causes to be manufactured, orders,
25 causes to be ordered or otherwise obtains from a new vendor after the Effective Date, Gesswein
26 shall maintain copies of any report of testing of such products it receives, if any, shall maintain
27 copies of all vendor correspondence relating to the Phthalate Free concentration standards for two
28 (2) years after the Effective Date and shall produce such copies to Davia within fifteen (15) business

1 days of receipt of written request from Davia.

2 **3.3 Covered Product Warnings**

3 As of January 1, 2024, Gesswein shall not distribute or otherwise sell any Covered Product
4 to a California Customer unless such Covered Product meets the Phthalate Free and Lead Free
5 concentration standards of this Agreement or is shipped with product package label as set forth
6 hereafter.

7 Each such warning utilized by Gesswein for any Covered Product shall be prominently
8 placed either on the product, its labeling or its packaging with such conspicuousness as compared
9 with other words, statements, designs, or devices as to render it likely to be read and understood by
10 an ordinary individual under customary conditions *before* purchase or use.

11 Each warning shall either be printed directly on the Covered Product consumer cardboard
12 packaging or shall be affixed to the consumer cardboard packaging. Each warning shall include the
13 yellow triangle with an internal exclamation point and state:

14 For Phthalate Covered Product:

15 **⚠ WARNING:** The vinyl materials of this product can
16 expose you to chemicals, including di(2-ethylhexyl
17 phthalate (DEHP), diisodecyl phthalate (DIDP) and
18 diisononyl phthalate (DINP), that are known to the State of
19 California to cause cancer and birth defects or other
20 reproductive harm. For more information go to
21 www.P65Warnings.ca.gov.

22 or

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

25 For Lead Covered Product:

26 **⚠ WARNING:** The brass materials of this product can
27 expose you to chemicals, including lead, that are known to
28 the State of California to cause cancer and birth defects or
other reproductive harm. For more information go to
www.P65Warnings.ca.gov.

or

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

3 Where a label used to provide a warning under this section includes consumer information
4 in a language other than English, the warning in this section must also be provided in that language
5 in addition to English.

6 If, before execution of this Agreement, Gesswein has already attached or included otherwise
7 compliant warning labels to the covered products without the chemical long form name or foreign
8 language complement, then those obligations shall apply to any labels ordered or attached after
9 execution of this Agreement.

10 **3.4 Internet Ecommerce Covered Product Warnings**

11 A warning must be given in conjunction with the sale, or offer of sale, by Gesswein of any
12 Covered Product not confirmed by Gesswein to be Lead Free and Phthalate Free via any
13 ecommerce website owned, operated, managed or controlled by, or for the benefit of, Gesswein. A
14 warning will satisfy this requirement if it appears either: (a) on the same web page on which a
15 Covered Product is displayed; (b) on the same web page as the order form for a Covered Product;
16 (c) on the same page as the price for any Covered Product; or (d) on one or more web pages
17 displayed to a purchaser during the checkout process. One of the following warning statements
18 shall be used and shall appear in any of the above instances adjacent to or immediately following
19 the display, description, or price of the Covered Product for which it is given, or through a
20 hyperlink using the word "WARNING", in the same type size or larger than the Covered Product
21 description text:

22 For Phthalate Covered Product:

23 **⚠ WARNING:** The vinyl materials of this product can
24 expose you to chemicals, including di(2-ethylhexyl)
25 phthalate (DEHP), diisodecyl phthalate (DIDP) and
26 diisononyl phthalate (DINP), that are known to the State of
27 California to cause cancer and birth defects or other
reproductive harm. For more information go to
www.P65Warnings.ca.gov.

28 For Lead Covered Product:

1 **⚠ WARNING:** The brass materials of this product can
2 expose you to chemicals, including lead, that are known to
3 the State of California to cause cancer and birth defects or
4 other reproductive harm. For more information go to
5 www.P65Warnings.ca.gov.

6 Alternatively, the following "short form" warning may be used on the ecommerce website, but only
7 if the same warning language also appears on the product label or consumer packaging of the
8 Covered Product itself.

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

11 **4. MONETARY PAYMENTS**

12 **4.1 Civil Penalty**

13 As a condition of settlement of all the claims referred to in this agreement, Gesswein shall
14 pay a total of \$2,100 in civil penalties in accordance with California Health & Safety Code §
15 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental
16 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Davia.

17 **4.2 Augmentation of Penalty Payments**

18 For purposes of the penalty assessment under this Agreement, Davia is relying entirely
19 upon Gesswein for accurate, good faith reporting to Davia of the nature and amounts of relevant
20 sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents
21 evidence to counsel for Gesswein that the Covered Products have been distributed in California in
22 sales volumes materially different (more than 25%) than those identified by Gesswein in responses
23 to Davia's discovery requests prior to execution of this Agreement, and Gesswein does not provide
24 Davia with competent and credible evidence to dispute this claim, then Gesswein shall be liable for
25 an additional penalty amount of \$10,000. Davia agrees to provide counsel for Gesswein with a
26 written demand for all such additional penalties and attorney fees under this Section. After service
27 of such demand, Gesswein shall have thirty (30) days to either present evidence to counter this
28 claim or to agree to the amount of fees and penalties owing by Gesswein and submit such payment
to Davia in accordance with the method of payment of penalties and fees identified in Section 4.1

1 and 4.4. Should this thirty (30) day period pass without any such resolution between the parties
2 and payment of such additional penalties and fees, Davia shall be entitled to file a formal legal
3 claim for the additional civil penalties pursuant to this Section and the prevailing party to such
4 action shall be entitled to all reasonable attorney fees and costs relating to such claim.

5 **4.3 Reimbursement of Davia's Fees and Costs**

6 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
7 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
8 issue to be resolved after the material terms of the agreement had been settled. Gesswein expressed
9 a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
10 The Parties then attempted to (and did) reach an accord on the compensation due to Davia and her
11 counsel under general contract principles and the private attorney general doctrine codified at
12 California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees
13 that may be incurred on appeal. Under these legal principles, Gesswein shall pay Davia's counsel
14 the amount of \$35,000 for fees and costs incurred investigating, litigating and enforcing this matter.

15 **4.4 Payment Procedures**

16 No later than fifteen (15) days after execution of this Agreement, Gesswein shall deliver all
17 settlement payment funds required by this Agreement to its counsel. Within one (1) week of
18 receipt of the settlement funds, Gesswein's counsel shall confirm receipt in writing to plaintiff's
19 counsel and, thereafter, hold Gesswein's settlement checks or payment(s) until such time as the
20 Court approves this settlement as contemplated by Section 7. Within five (5) business days of the
21 date plaintiff provides electronic mail notice to counsel for defendants that the Court has approved
22 this settlement, Gesswein's counsel shall deliver the settlement payments to plaintiff's counsel as
23 follows:

24 a civil penalty check payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties,
25 2021-01182, 2021-01493") in the amount of \$1,575;

26 a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65
27 Penalties, 2021-01182, 2021-01493") in the amount of \$525; and
28

1 an attorney fees and costs reimbursement check payable to "Sheffer Law Firm" (EIN 55-08-
2 58910, Memo line "2021-01182, 2021-01493") in the amount of \$35,000.

3 All Section 4.1 and Section 4.3 civil penalty and attorney fee/cost payments shall be
4 delivered to plaintiff's counsel at the following address:

5 Sheffer Law Firm
6 Attn: Proposition 65 Controller
7 232 E. Blithedale Ave., Suite 210
8 Mill Valley, CA 94941

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

12 Sheffer Law Firm
13 Attn: Proposition 65 Controller
14 232 E. Blithedale Avenue, Suite 210
15 Mill Valley, CA 94941

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

19 While the obligations of this agreement are binding upon execution, the Release of
20 Gesswein shall not become effective until after all Section 4.1 and Section 4.3 monetary payments
21 have been made by Gesswein and all funds have cleared.

22 **4.5 Issuance of 1099 Forms**

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

25 (a) issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010,
26 Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Sections 4.1 and
27 4.2;

28 (b) 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) issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section

1 4.2 and 4.3.

2 **5. RELEASES**

3 **5.1 DAVIA'S RELEASE OF GESSWEIN**

4 5.1.1 This settlement agreement is a full, final and binding resolution between Davia, and
5 Gesswein of any violation of Proposition 65 that was or could have been asserted by Davia,
6 individually and in the public interest, on behalf of herself and her past and current representatives,
7 agents, attorneys, successors and/or assigns ("Releasers") against Gesswein, and each of their
8 directors, officers, employees, attorneys, agents, insurers and reinsurers, parents, and subsidiaries
9 ("Releasees"), their downstream distributors, wholesalers, marketplace hosts, direct or indirect
10 customers, retailers, franchisers, cooperative members, licensors and licensees ("Downstream
11 Releasees") based on their failure to warn about alleged exposures to Lead, DEHP, DIDP and DINP
12 contained in the Covered Products that were manufactured, distributed, sold or offered for sale by
13 Gesswein before the Effective Date. Compliance with the terms of this Agreement constitutes
14 compliance with Proposition 65 by Gesswein with regard to the alleged or actual failure to warn
15 about exposure to Lead, DEHP, DIDP and DINP from Covered Products manufactured, sold or
16 distributed for sale after the Effective Date.

17 5.1.2 In further consideration of the promises and agreements herein contained, and for so
18 long as Gesswein remains in compliance with the terms of this Agreement, Davia on behalf of
19 herself, her past and current representatives, agents, attorneys, successors and/or assigns hereby
20 waives all Davia's rights to institute or participate in, directly or indirectly, any form of legal action
21 and releases all claims that Davia may have, including, without limitation, all actions, and causes of
22 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
23 losses, or expenses -- including, but not limited to, investigation fees, expert fees, and attorneys'
24 fees,-- limited to and arising under Proposition 65 with respect to the Lead, DEHP, DIDP and DINP
25 in the Covered Products manufactured, distributed, sold and/or offered for sale by Gesswein
26 before the Effective Date (collectively "claims"), against Gesswein and Releasees and Downstream
27 Releasees.

28 5.1.3 Davia also, in her individual capacity and on behalf of her past and current

1 representatives, agents, attorneys, successors and/or assigns, provides a general release herein
2 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
3 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands
4 of Davia, of any nature, character or kind, known or unknown, suspected or unsuspected, arising
5 out of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by
6 Gesswein or Releasees or Downstream Releasees before the Effective Date. Davia acknowledges
7 that she is familiar with section 1542 of the California civil code, which provides as follows:

8
9 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
10 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW
11 OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
12 OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
13 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS
14 OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
15 PARTY.

13 Davia, in her individual capacity and on behalf of her past and current representatives,
14 agents, attorneys, successors and/or assigns expressly waives and relinquishes any and all rights
15 and benefits that she may have under, or which may be conferred on her by the provisions of
16 Section 1542 of the California Civil Code as well as under any other state or federal statute or
17 common law principle of similar effect, to the fullest extent that she may lawfully waive such rights
18 or benefits pertaining to the released matters. In furtherance of such intention, excepting Section
19 4.2, the release hereby given shall be and remain in effect as a full and complete release
20 notwithstanding the discovery or existence of any such additional or different claims or facts
21 arising out of the released matters.

22 5.1.4 This section 5.1 release shall not extend upstream to any entities, other than
23 Gesswein, that manufactured the Covered Products or any component parts thereof, or any
24 distributors or suppliers who sold the covered products or any component parts thereof to
25 Gesswein.

26 **5.2 Gesswein's Release of Davia**

27 The Release by Davia is mutual. Gesswein, each on behalf of itself, its past and current
28 agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims

1 against Davia and her attorneys and other representatives, for any and all actions taken or
2 statements made (or those that could have been taken or made) by Davia and her attorneys and
3 other representatives, whether in the course of investigating claims, otherwise seeking to enforce
4 Proposition 65 against it in this matter, or with respect to the Products. Gesswein acknowledges
5 that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

6
7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
8 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW
9 OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
10 OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
11 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS
12 OR HER SETTLEMENT WITH THE DEBTOR OR RELEASING
13 PARTY.

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

21 **6. ENFORCEMENT**

22 Prior to bringing any motion, order to show cause, or other proceeding to enforce
23 Proposition 65 or any terms of this Agreement relating to the alleged sale in California of any
24 Covered Product without a warning and which is alleged to not be Phthalate Free, in actual or
25 alleged violation of this Agreement, Davia shall provide a Notice of Violation ("NOV") to
26 Gesswein. The NOV shall include, for each Covered Product alleged to be violation of this
27 Agreement: the date of alleged violations(s), place of sale, date and proof of purchase (if relevant),
28 and any test data obtained by Davia regarding each such Covered Product. Davia shall take no
further action regarding any alleged violation nor seek any monetary recovery for herself, her

1 agents or her counsel if, within 30 days of receiving such NOV, Gesswein demonstrates (1) that the
2 Covered Product was manufactured distributed, sold or offered for sale by Gesswein before May 1,
3 2019; or (2) that Gesswein directed the retailer or distributor of the Covered Product to take
4 corrective action by placing an appropriate warning on the Covered Product(s) compliant with
5 Section 3.3 of this Agreement following service of the NOV; or (3) that the Covered Products are
6 Phthalate Free.

7 **7. COURT APPROVAL**

8 If the Court does not approve this Agreement in its entirety, the Parties shall meet and
9 confer to determine whether to modify the terms of the Agreement and to resubmit it for approval.
10 In meeting and conferring, the Parties agree to negotiate in good faith to reach agreement on any
11 actions reasonably necessary to amend and/or modify this Agreement in order to further the
12 mutual intention of the Parties in entering into this Agreement. The Agreement shall become null
13 and void if, for any reason, it is not approved and entered by the Court, as it is executed, within one
14 year after it has been fully executed by all Parties. The Parties agree that, upon Court approval, a
15 Court judgment shall be entered on the terms of this Agreement.

16 **8. SEVERABILITY**

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

21 **9. GOVERNING LAW**

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

23 **10. NOTICES**

24 When any Party is entitled to receive any notice under this Agreement, the notice shall be
25 sent by certified mail or electronic mail to the following:

26 For Gesswein:

27
28 Greg Gesswein, President
Paul H. Gesswein & Co., Inc.

1 201 Hancock Avenue
2 P.O. Box 3398
3 Bridgeport, CT 06605-0936

4 With a copy to its counsel:

5 Brian M. Ledger, Esq.
6 Gordon Rees Scully Mansukhani
7 Bledger@Grsm.Com

8 For Davia to:

9 Proposition 65 Coordinator
10 Sheffer Law Firm
11 232 E. Blithedale Ave., Suite 210
12 Mill Valley, CA 94941
13 gregs@sheffer-law.net

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

16 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

17 Davia agrees to comply with the reporting form requirements referenced, in California
18 Health & Safety Code §25249.7(f).

19 **12. MODIFICATION**

20 This Agreement may be modified only by written agreement of the Parties.

21 **13. ENTIRE AGREEMENT**

22 This Agreement contains the sole and entire agreement and understanding of the Parties
23 with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
24 commitments, and understandings related hereto. No representations, oral or otherwise, express or
25 implied, other than those contained herein have been made by any Party hereto. No other
26 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
27 any of the Parties. No supplementation, modification, waiver, or termination of this Agreement
28 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.

1 **14. ATTORNEY'S FEES**

2 **14.1** Should either Party prevail on any motion, application for order to show cause or
3 other proceeding to enforce a violation of this Agreement, that Party shall be entitled to its
4 reasonable attorney fees and costs incurred as a result of such motion, order or application,
5 consistent with C.C.P. §§ 1021 and 1021.5.

6 **14.2** Except as otherwise specifically provided herein, each Party shall bear its own costs
7 and attorney's fees in connection with the Notice.

8 **14.3** Nothing in this Section shall preclude a Party from seeking an award of sanctions
9 pursuant to law.

10 **15. NEUTRAL CONSTRUCTION**

11 Both Parties and their counsel have participated in the preparation of this Agreement and
12 this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to
13 revision and modification by the Parties and has been accepted and approved as to its final form by
14 all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement
15 shall not be interpreted against any Party as a result of the manner of the preparation of this
16 Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing
17 that ambiguities are to be resolved against the drafting Party should not be employed in the
18 interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code
19 Section 1654.

20 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

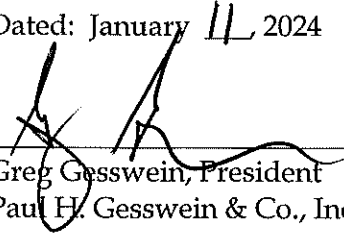
21 This Agreement may be executed in counterparts and by facsimile or portable document
22 format (PDF), each of which shall be deemed an original, and all of which, when taken together,
23 shall constitute one and the same document.

24 **17. AUTHORIZATION**

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

27 **IT IS SO AGREED**

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<p>Dated: January 11, 2024</p>  <p>_____ Greg Gesswein, President Paul H. Gesswein & Co., Inc.</p>	<p>Dated: January __, 2024</p> <p>_____ Susan Davia</p>
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Dated: January __, 2024

Greg Gesswein, President
Paul H. Gesswein & Co., Inc.

Dated: January 2, 2024


Susan Davia