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6 SUSAN DAVIA

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 SHIN'S TRADING CO., INC., TJX
16 COMPANIES, INC. and DOES 1-150,

17 Defendants.
18

Case No. CIV2202537

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

(Cal. Health & Safety Code § 25249.6 et seq.)

Action Filed: August 12, 2022

Trial Date:

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent to Judgment Settlement Agreement (“Agreement” or “Settlement
4 Agreement”) is entered into by and between plaintiff Susan Davia (“Davia”) and defendant Shin’s
5 Trading Co., Inc. (“Shin’s Trading”), with Davia and Shin’s Trading each referred to as a “Party”
6 and collectively 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
9 of exposure to toxic chemicals and improve human health by reducing or eliminating hazardous
10 substances contained in consumer products.

11 **1.3 Shin’s Trading**

12 Shin’s Trading Corporation 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 Shin’s Trading is responsible for the design, manufacture, distribution
17 and/or sale, in the State of California, of Spa Solutions shower accessory products with vinyl cases
18 that expose users to di(2-ethylhexyl)phthalate (“DEHP”) without first providing “clear and
19 reasonable warning” under Proposition 65. Pursuant to Proposition 65, DEHP is listed as a
20 carcinogen and reproductive toxin. DEHP shall be referred to hereinafter as the “Listed
21 Chemical.”

22 **1.5 Notice of Violation**

23 On September 14, 2021, Davia served Shin’s Trading and various public enforcement
24 agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers
25 and the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for
26 failing to warn consumers of the presence of DEHP found in the Spa Solutions shower accessory
27 products with vinyl cases sold in California (AG Notice 2021-02290). This September 14, 2021,
28 Notice of Violation shall hereafter be referred to as “Notice.” The Parties represent that, as of the

1 date each executes this Agreement, to the best of each of their knowledge, no public enforcer has
2 commenced or is diligently prosecuting a Proposition 65 enforcement action related to Listed
3 Chemical the Covered Products as identified in the Notice and Complaint.

4 **1.6 Complaint**

5 On August 12, 2022, Davia filed a Complaint in the Superior Court of the State of California
6 for the County of Marin, Case No. CIV2202357, alleging violations by Shin's Trading and TJX
7 Companies, Inc. ("TJX") of Health and Safety Code § 25249.6 based on the alleged exposures to the
8 Listed Chemical in the Covered Products (the "Action").

9 **1.7 No Admission**

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

23 **1.8 Consent to Jurisdiction**

24 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
25 Court has jurisdiction over Shin's Trading as to this Agreement, that venue for any action to
26 enforce this Agreement is proper in County of Marin, that this Agreement is made pursuant to
27 Code of Civil Procedure Section 664.6 and the Marin County Superior Court shall have jurisdiction
28 to enforce the provisions of this Agreement until performance in full of the terms of the settlement.

1 **2. DEFINITIONS**

2 **2.1** "Covered Product" shall mean all Spa Solutions shower accessory products with
3 vinyl cases, including, but not limited to, CALA Products Spa Solutions Tame the Mane Shower
4 Cap & Hair turban sets with vinyl case, all styles (including, but not limited to, Flora Dreams, Pink
5 Hues Leopard, Hot Pink Tie Dye, Blue Flower, Leopard and Tropical).

6 **2.2** "Phthalate Free" Covered Products shall mean any accessible component of any
7 Covered Product contains less than or equal to 1,000 parts per million ("ppm") of DEHP, DINP, di-
8 n-butyl phthalate ("DBP"), di-isodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP") and
9 butyl benzyl phthalate ("BBP") as determined by a minimum of duplicate quality controlled test
10 results using Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C
11 or equivalent methodologies utilized by federal or state agencies to determine the presence and
12 measure the quantity of phthalates in solid substances.

13 **2.3** "Effective Date" shall mean March 1, 2023.

14 **3. INJUNCTIVE-TYPE RELIEF**

15 **3.1 Products No Longer in Shin's Trading's Control**

16 No later than the Effective Date, Shin's Trading shall send a letter, electronic or otherwise
17 ("Notification Letter") to the manager for any retail entity that Shin's Trading reasonably believes
18 maintains inventory of Covered Products for sale to consumers with a ship to address in
19 California, which products are not labeled with a Proposition 65 warning message. The
20 Notification Letter shall advise the recipient that Covered Products "have been tested for the
21 presence of phthalates and found to contain DEHP, a chemical known to the State of California to
22 cause cancer and reproductive harm," and request that the recipient either pull all Covered
23 Products from store displays and return its entire inventory of Covered Products to Shin's Trading
24 or label the Covered Products remaining in inventory for sale in or to California with a label that
25 complies with Section 3.3. The Notification Letter shall request a response from the recipient
26 within 15 days, confirming that the letter was received. Shin's Trading shall maintain records of
27 all correspondence or other communications generated pursuant to this Section for two years after
28 the Effective Date and shall promptly produce copies of such records upon Davia's written

1 request.

2 **3.2 Product Reformulation Commitment**

3 **3.2.1** No later than the Effective Date, Shin's Trading shall provide the Phthalate Free
4 concentration standards of Section 2.2 to its then-current vendors or manufacturers of any Covered
5 Product and **request** such entities not to incorporate any raw or component materials that do not
6 meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product or to
7 supply any Covered Product to Shin's Trading that is not Phthalate Free. Shin's Trading shall
8 maintain copies of all vendor correspondence relating to the Phthalate Free concentration
9 standards and shall produce such copies to Davia within fifteen (15) days of receipt of written
10 request from Davia.

11 **3.2.2** After the Effective Date, Shin's Trading shall provide the Phthalate Free
12 concentration standards of Section 2.2 to any new vendors or manufacturers of any Covered
13 Product and request such entities not to incorporate any raw or component materials that do not
14 meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product. Prior to
15 purchase and acquisition of any Covered Product from any new vendor, Shin's Trading shall
16 obtain a written confirmation and accompanying laboratory test result from the new vendor
17 demonstrating compliance with the Phthalate Free concentration standard in all materials
18 comprising the Covered Product. For every Covered Product Shin's Trading manufactures, causes
19 to be manufactured, orders, causes to be ordered or otherwise obtains from a new vendor after the
20 Effective Date, Shin's Trading shall maintain copies of all testing of such products demonstrating
21 compliance with this section, shall maintain copies of all vendor correspondence relating to the
22 Phthalate Free concentration standards for two (2) years from the Effective Date and shall produce
23 such copies to Davia within fifteen (15) business days of receipt of written request from Davia.
24 Shin's Trading shall maintain copies of all vendor correspondence relating to the Phthalate Free
25 concentration standards pursuant to this Section for two (2) years from the Effective Date and shall
26 produce such copies to Davia within fifteen (15) business days of receipt of written request from
27 Davia, which request may only be made one time in each calendar year.

28 ///

1 **3.2.3** As of April 15, 2023, Shin’s Trading shall not distribute any Covered Product unless
2 such Covered Product meets the Phthalate Free concentration standards of this Agreement or
3 contains one or more phthalate chemicals at levels above the Phthalate Free standard and is
4 labelled with a warning pursuant to Section 3.3.

5 **3.3 Covered Product Warnings**

6 **3.3.1** For any inventory of Covered Products obtained by Shin’s Trading prior to April 1,
7 2023, that is not confirmed to be Phthalate Free, and has levels of one or more Proposition 65 listed
8 phthalates that do not meet the Phthalate Free standards, Shin’s Trading shall not distribute, sell or
9 ship, or cause to be distributed, sold or shipped, any such Covered Product unless such Covered
10 Product is shipped with product package label as set forth hereafter.

11 Each such warning utilized by Shin’s Trading for any Covered Product shall be
12 prominently placed either on the product, its labeling or its packaging with such conspicuousness
13 as compared with other words, statements, designs, or devices as to render it likely to be read and
14 understood by an ordinary individual under customary conditions *before* purchase or use.

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

18
19 **⚠ WARNING:** The vinyl materials of this product can
20 expose you to [chemicals including] [name one or more
21 listed phthalates], which [is][are] known to the State of
22 California to cause [cancer][and][birth defects or other
reproductive harm]. For more information go to
www.P65Warnings.ca.gov.

23 or

24 **⚠ WARNING:** [Cancer] [and] [Reproductive Harm]. -
25 www.P65Warnings.ca.gov

26 Defendant shall select appropriate bracketed terms according to the chemical(s) present and all
27 warnings implemented shall comply with and be consistent with the regulations in 27 CCR Section
28 25603.

1 **3.4 Internet Ecommerce Covered Product Warnings**

2 A warning must be given in conjunction with the sale, or offer of sale, by Shin’s Trading of
3 any Covered Product not confirmed by Shin’s Trading to be Phthalate Free via any ecommerce
4 website owned, operated, managed or controlled by, or for the benefit of, Shin’s Trading. A
5 warning will satisfy this requirement if it appears either: (a) on the same web page on which a
6 Covered Product is displayed; (b) on the same web page as the order form for a Covered Product;
7 (c) on the same page as the price for any Covered Product; or (d) on one or more web pages
8 displayed to a purchaser during the checkout process. One of the following warning statements
9 shall be used and shall appear in any of the above instances adjacent to or immediately following
10 the display, description, or price of the Covered Product for which it is given, or through a
11 hyperlink using the word “WARNING”, in the same type size or larger than the Covered Product
12 description text:

13
14 **⚠WARNING:** This product can expose you to [chemicals
15 including] [name appropriate liste chemical(s)], which
16 [is][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.

17 Alternatively, the following “short form” warning may be used on the ecommerce website, but only
18 if the same warning language also appears on the product label or consumer packaging of the
19 Covered Product itself.

20
21 **⚠WARNING:** [Cancer] [and] [Reproductive Harm] -
22 www.P65Warnings.ca.gov.

23 Defendant shall select appropriate bracketed terms according to the chemical(s) present and all
24 warnings implemented shall comply with and be consistent with the regulations in 27 CCR Section
25 25603.
26
27
28

1 **4. MONETARY PAYMENTS**

2 **4.1 Civil Penalty**

3 As a condition of settlement of all the claims referred to in this Agreement, Shin's Trading
4 shall pay a total of \$3,200 in civil penalties in accordance with California Health & Safety Code §
5 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental
6 Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Davia.

7 **4.2 Augmentation of Penalty Payments**

8 For purposes of the penalty assessment under this Agreement, Davia is relying entirely
9 upon Shin's Trading for accurate, good faith reporting to Davia of the nature and amounts of
10 relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and
11 presents evidence to counsel for Shin's Trading that the Covered Products have been distributed in
12 California in sales volumes materially different (more than 25%) than those identified by Shin's
13 Trading prior to execution of this Agreement, and Shin's Trading does not provide Davia with
14 competent and credible evidence to dispute this claim, then Shin's Trading shall be liable for an
15 additional penalty amount of \$10,000.00. Davia agrees to provide counsel for Shin's Trading with
16 a written demand for all such additional penalties and attorney fees under this Section. After
17 service of such demand, Shin's Trading shall have thirty (30) days to either present evidence to
18 counter this claim or to agree to the amount of fees and penalties owing by Shin's Trading and
19 submit such payment to Davia in accordance with the method of payment of penalties and fees
20 identified in Section 4.1 and 4.4. Shin's Trading shall have an extension of this thirty (30) day
21 deadline for a period of no more than twenty (20) days upon submission of a written request
22 stating the good faith basis for the extension. Should this thirty (30) day period (as extended if
23 applicable) pass without any such resolution between the parties and payment of such additional
24 penalties and fees, Davia shall be entitled to file a formal legal claim for the additional civil
25 penalties pursuant to this Section and the prevailing party to such action shall be entitled to all
26 reasonable attorney fees and costs relating to such claim.

27 **4.3 Reimbursement of Davia's Fees and Costs**

28 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without

1 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
2 issue to be resolved after the material terms of the agreement had been settled. Shin's Trading
3 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
4 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due
5 to Davia and her counsel under general contract principles and the private attorney general
6 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in
7 this matter, except fees that may be incurred on appeal. Under these legal principles, Shin's
8 Trading shall pay Davia's counsel the amount of \$32,000 for fees and costs incurred investigating,
9 litigating and enforcing this matter.

10 **4.4 Payment Procedures**

11 No later than fifteen (15) days after execution of this Agreement, Shin's Trading shall
12 deliver all settlement payment funds required by this Agreement to its counsel. Within one (1)
13 week of receipt of the settlement funds, Shin's Trading's counsel shall confirm receipt in writing to
14 plaintiff's counsel and, thereafter, hold Shin's Trading's settlement checks or payment(s) until such
15 time as the Court approves this settlement as contemplated by Section 6. Within five (5) business
16 days of the date plaintiff provides electronic mail notice to counsel for Shin's Trading that the
17 Court has approved this settlement, Shin's Trading's counsel shall deliver the settlement payments
18 to plaintiff's counsel as follows:

19 a civil penalty check payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65
20 Penalties, 2021-02290"), in the amount of \$2,400

21 a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65
22 Penalties, 2021-02290") in the amount of \$800

23 an attorney fee and cost reimbursement check payable to "Sheffer Law Firm" (EIN 55-08-
24 58910, Memo line "2021-02290") in the amount of \$32,000.

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

27 Sheffer Law Firm
28 Attn: Proposition 65 Controller

1 232 E. Blithedale Avenue, Suite 210
2 Mill Valley, CA 94941

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

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

10 All civil penalty and attorney fee/cost payments shall be delivered to plaintiff's counsel at the
11 following address within 10 business days after execution of this Agreement:

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

16 Shin's Trading 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
18 within five business days of the due date for such payment.

19 While the obligations of this agreement are binding upon execution, the Release of Shin's
20 Trading shall not become effective until after all monetary payments have been made by Shin's
21 Trading 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, Shin's Trading 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 4.2;
- 27 (b) issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2, whose address and tax
28 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
4.2 and 4.3.

1 **5. RELEASES**

2 **5.1 DAVIA’S RELEASE OF SHIN’S TRADING**

3 5.1.1 This settlement agreement is a full, final and binding resolution between Davia, and
4 Shin’s Trading of any violation of Proposition 65 that was or could have been asserted by Davia,
5 individually and on behalf of herself and her past and current representatives, agents, attorneys,
6 successors and/or assigns (“Releasers”) against Shin’s Trading, and each of their directors,
7 officers, employees, attorneys, agents, parents, and subsidiaries (“Releasees”), based on their
8 failure to warn about alleged exposures to DEHP contained in the Covered Products that were
9 manufactured, distributed, sold or offered for sale by Shin’s Trading before the Effective Date.

10 Compliance with the terms of this Agreement constitutes compliance with Proposition 65
11 by Shin’s Trading with regard to the alleged or actual failure to warn about exposure to DEHP
12 from Covered Products manufactured, sold or distributed for sale after the Effective Date.

13 5.1.2 Davia, acting on her own behalf and in the public interest, releases Defendant from
14 all claims for violations of Proposition 65 up through the Effective Date based on failure to warn of
15 the exposure to DEHP from Covered Products as set forth in the Notice. Compliance with the
16 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
17 exposures to DEHP from Covered Products as set forth in the Notice of Violation.

18 5.1.3 Davia also, in her individual capacity and on behalf of her past and current
19 representatives, agents, attorneys, successors and/or assigns, provides a general release herein
20 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
21 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands
22 of Davia, of any nature, character or kind, known or unknown, suspected or unsuspected, arising
23 out of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by
24 Shin’s Trading or Releasees before the Effective Date. Davia acknowledges that she is familiar
25 with section 1542 of the California civil code, which provides as follows:

26
27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
28 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF

1 EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR
2 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
3 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

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

13 5.1.4 This section 5.1 release shall not extend upstream to any entities, other than Shin's
14 Trading, that manufactured the Covered Products or any component parts thereof, or any
15 distributors or suppliers who sold the covered products or any component parts thereof to Shin's
16 Trading.

17 **5.2 Shin's Trading's Release of Davia**

18 The Release by Davia is mutual. Shin's Trading, each on behalf of itself, its past and
19 current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all
20 claims against Davia and her attorneys and other representatives, for any and all actions taken or
21 statements made (or those that could have been taken or made) by Davia and her attorneys and
22 other representatives, whether in the course of investigating claims, otherwise seeking to enforce
23 Proposition 65 against it in this matter, or with respect to the Products. Shin's Trading
24 acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as
25 follows:

26 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
27 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
28 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

1 SETTLEMENT WITH THE DEBTOR OR RELEASING PARTY.

2 Shin's Trading expressly waives and relinquishes any and all rights and benefits which it
3 may have under, or which may be conferred on it by the provisions of Section 1542 of the
4 California Civil Code as well as under any other state or federal statute or common law principle
5 of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining
6 to the released matters. In furtherance of such intention, the release hereby given shall be and
7 remain in effect as a full and complete release notwithstanding the discovery or existence of any
8 such additional or different claims or facts arising out of the released matters.

9 **6. COURT APPROVAL**

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

19 **7. ENFORCEMENT**

20 Prior to bringing any motion, order to show cause, or other proceeding to enforce
21 Proposition 65 or any terms of this Agreement relating to the alleged sale in California of any
22 Covered Product without a warning and which is alleged to not be Phthalate Free, in actual or
23 alleged violation of this Agreement, Davia shall provide a Notice of Violation ("NOV") to Shin's
24 Trading. The NOV shall include, for each Covered Product alleged to be violation of this
25 Agreement: the date of alleged violations(s), place of sale, date and proof of purchase (if relevant),
26 and any test data obtained by Davia regarding each such Covered Product. Davia shall take no
27 further action regarding any alleged violation nor seek any monetary recovery for herself, her
28 agents or her counsel if, within thirty (30) days of receiving such NOV, Shin's Trading

1 demonstrates (1) that the Covered Product was manufactured distributed, sold or offered for sale
2 by Shin's Trading before September 14, 2021; or (2) that Shin's Trading directed the retailer or
3 distributor of the Covered Product to take corrective action by placing an appropriate warning on
4 the Covered Product(s) compliant with Section 3.3 of this Agreement following service of the
5 NOV; or (3) that the Covered Products are Phthalate Free. Shin's Trading shall have an extension
6 of this thirty (30) day deadline for a period of no more than twenty (20) additional days upon
7 submission of a written request stating the good faith basis for the extension.

8 **8. SEVERABILITY**

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

13 **9. GOVERNING LAW**

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

15 **10. NOTICES**

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

18 For Shin's Trading:

19 Jung M. Shin, CEO
20 Shin's Trading Co., Inc.
21 3121 S. Main Street
22 Los Angeles CA 90007

23 With a copy to its counsel:

24 Edward Chong, Esq.
25 Law Office Edward Chong, A Professional Corporation
26 3425 Wilshire Blvd., Suite 2700
27 Los Angeles, CA 90010
28 edlawla@gmail.com

For Davia to:

Proposition 65 Coordinator

1 Sheffer Law Firm
2 232 E. Blithedale Ave., Suite 210
3 Mill Valley, CA 94941
4 gregs@sheffer-law.net

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

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

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

10 **12. MODIFICATION**

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

12 **13. ENTIRE AGREEMENT**

13 This Agreement contains the sole and entire agreement and understanding of the Parties
14 with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
15 commitments, and understandings related hereto. No representations, oral or otherwise, express
16 or implied, other than those contained herein have been made by any Party hereto. No other
17 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
18 any of the Parties. No supplementation, modification, waiver, or termination of this Agreement
19 shall be binding unless executed in writing by the Party to be bound. No waiver of any of the
20 provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other
21 provisions whether or not similar, nor shall such waiver constitute a continuing waiver.

22 **14. ATTORNEY'S FEES**

23 **14.1** Should either Party prevail on any motion, application for order to show cause or
24 other proceeding to enforce a violation of this Agreement, that Party shall be entitled to its
25 reasonable attorney fees and costs incurred as a result of such motion, order or application,
26 consistent with C.C.P. §§ 1021 and 1021.5.

27 **14.2** Except as otherwise specifically provided herein, each Party shall bear its own
28 costs and attorney's fees in connection with the Notice.

14.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions

1 pursuant to law.

2 **15. NEUTRAL CONSTRUCTION**

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

12 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

16 **17. AUTHORIZATION**

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

19 **IT IS SO AGREED**

20

21 Dated: April __, 2023

22

23 _____
24 Jung M. Shin, CEO
25 Shin's Trading Co., Inc.

26

27

28

Dated: April __, 2023

Susan Davia

1 pursuant to law.

2 **15. NEUTRAL CONSTRUCTION**

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

12 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

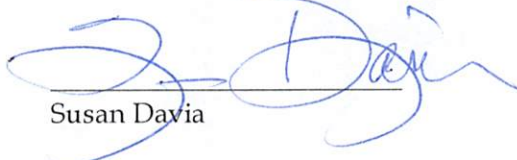
13 This Agreement may be executed in counterparts and by facsimile or portable document
14 format (PDF), each of which shall be deemed an original, and all of which, when taken together,
15 shall constitute one and the same document.

16 **17. AUTHORIZATION**

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

19 **IT IS SO AGREED**

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<p>Dated: April __, 2023</p> <p>_____</p> <p>Jung M. Shin, CEO Shin's Trading Co., Inc.</p>	<p>Dated: April 7, 2023</p> <p></p> <p>_____ Susan Davia</p>
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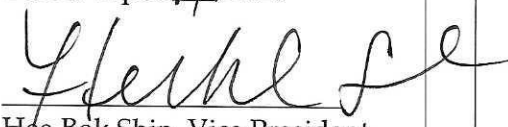
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<p>Dated: April <u>14</u>, 2023</p>  <p>Hee Bok Shin, Vice President Shin's Trading Co., Inc.</p>	<p>Dated: April __, 2023</p> <hr/> <p>Susan Davia</p>
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