

**PROPOSITION 65 SETTLEMENT AGREEMENT  
(Susan Davia AG Notices 2024-02630)**

**1. INTRODUCTION**

**1.1 The Parties**

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between noticing party Susan Davia (“Davia”) and noticed party Lifestyle Davis, LLC, dba Davis ACE Hardware (“LIFESTYLE”), with Davia and LIFESTYLE each referred to as a “Party” and collectively referred to as the “Parties.”

**1.2 Davia**

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

**1.3 LIFESTYLE**

LIFESTYLE 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 LIFESTYLE is responsible for the distribution and/or sale, in the State of California, of Primitives by Kathy branded luggage tags made with vinyl components that expose users to di(2-ethylhexyl)phthalate (“DEHP”) without first providing “clear and reasonable warning” under Proposition 65. Pursuant to Proposition 65, DEHP is listed as a carcinogen and reproductive toxin. DEHP shall be referred to hereinafter as the “Listed Chemical.”

**1.5 Notice of Violation**

On June 28, 2024, Davia served LIFESTYLE (through Davis Ace Hardware) 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 failing to warn consumers of the presence of DEHP found in Primitives by Kathy luggage tag products made with vinyl components sold in California (AG Notice 2024-02630).

The June 28, 2024, Notice of Violation shall hereafter be referred to as “Notice.” LIFESTYLE 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 DEHP in the Primitives by Kathy luggage tag products, as identified in the Notices.

### **1.6 No Admission**

This Agreement resolves claims that are denied and disputed by LIFESTYLE. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. LIFESTYLE 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 and otherwise contends that, all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws and regulations, including Proposition 65. Nothing in this Agreement shall be construed as an admission by LIFESTYLE 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 LIFESTYLE of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by LIFESTYLE. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect LIFESTYLE'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 LIFESTYLE as to this Agreement, that venue for any action to enforce this Agreement is proper in County of Marin, that this Agreement shall be construed as made pursuant to Code of Civil Procedure Section 664.6 and the Marin County Superior Court shall be considered to have jurisdiction to enforce the provisions of this Agreement until performance in full of the terms of the settlement.

## **2. DEFINITIONS**

**2.1** "Covered Product" shall mean all Primitives by Kathy, Inc. luggage tag products made with vinyl window components, including, but not limited to, "Not Your Bag" Item 36867.

**2.2** "Phthalate Free" Covered Products shall mean any accessible component of any Covered Product contains less than or equal to 1,000 parts per million ("ppm") of DEHP, DINP, di-n-butyl phthalate ("DBP"), di-isodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP") and

butyl benzyl phthalate (“BBP”) as determined by a minimum of duplicate quality controlled test results using Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies to determine the presence and measure the quantity of phthalates in solid substances.

**2.3** “Effective Date” shall mean November 1, 2024.

### **3. INJUNCTIVE-TYPE RELIEF**

#### **3.1 Products No Longer in LIFESTYLE’s Control**

The LIFESTYLE hardware store located at 815 3<sup>rd</sup> Street in Davis, California represents that it has pulled all Primitives by Kathy luggage tags from its store shelves and is no longer selling Covered Products from its store.

#### **3.2 Product Reformulation Commitment**

LIFESTYLE alleges has no current contact with Primitives by Kathy regarding the Notice or Davia’s claims against LIFESTYLE and Primitives by Kathy. LIFESTYLE further alleges that it has no information regarding the identity of the actual manufacturer of the Covered Products. As such, LIFESTYLE shall have no obligation to issue reformulation correspondence to the manufacturing vendor.

#### **3.3 Covered Product Labels**

For any Covered Products distributed or sold by LIFESTYLE or sold through an LIFESTYLE operated or managed ecommerce site after the Effective Date that are not Phthalate Free, LIFESTYLE shall not distribute, sell or ship, any such Covered Product unless LIFESTYLE has complied with all warning requirements set forth in section 3.3.1.

##### **3.3.1** Covered Product Label.

Should LIFESTYLE subsequently become aware of remaining inventory of Covered Products, it shall affix a label to the Covered Product or its immediate packaging that states:

**⚠ WARNING:** The vinyl materials of this product can expose you to chemicals, including di(2-ethylhexyl)phthalate (DEHP), that are known to the State of California to cause cancer. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

or

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

Where the Covered Product includes consumer information in a language other than English, the warning in this section must also be provided in that language in addition to English.

All Covered Product labels shall be prominently affixed to the product 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.

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

##### **4.1 Civil Penalty**

As a condition of settlement of all the claims referred to in this Settlement Agreement, LIFESTYLE shall pay a total of \$1,000 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1) & (d).

##### **4.2 Augmentation of Penalty Payments**

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon LIFESTYLE for accurate, good faith reporting to Davia of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents evidence to counsel for LIFESTYLE that the Covered Products have been distributed in California in sales volumes materially different (more than 100%) than those identified by LIFESTYLE prior to execution of this Agreement, and LIFESTYLE does not provide Davia with competent and credible evidence to dispute this claim, then LIFESTYLE shall be liable for an additional penalty amount of \$10,000.00, should Davia prevail on its formal claim as referenced below. Davia agrees to provide counsel for LIFESTYLE with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, LIFESTYLE shall have thirty (30) days to either present evidence to counter this claim or to agree to the amount of fees and penalties owing by LIFESTYLE and submit such payment to Davia in accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim

for the additional civil penalties pursuant to this Section and the prevailing party to such action shall be entitled to all reasonable attorney fees and costs relating to such claim.

#### **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 settlement terms 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. Under these principles, LIFESTYLE shall reimburse Davia's counsel the amount of \$18,100 for fees and costs incurred investigating and negotiating a resolution of this matter.

#### **4.4 Payment Procedures**

No later than ten (10) days after execution of this Agreement, LIFESTYLE shall deliver all settlement payment funds required by this Agreement to plaintiff's counsel as follows:

a civil penalty check payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2024-02630"), in the amount of \$750;

a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2024-02630") in the amount of \$250; and

an attorney's fee and cost reimbursement check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2024-02630") in the amount of \$18,100.

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

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

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

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

LIFESTYLE 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 ten (10) business days of the due date for such payment.

#### **4.5 Issuance of 1099 Forms**

After this Agreement has been executed and the settlement funds have been transmitted to Davia's counsel, LIFESTYLE shall issue separate 1099 forms to each OEHHA, Davia and Sheffer Law Firm.

### **5. RELEASES**

#### **5.1 Davia's Release of Lifestyle**

5.1.1 This settlement agreement is a full, final and binding resolution between Davia, and LIFESTYLE of any violation of Proposition 65 that was or could have been asserted by Davia, individually and on behalf of herself and her past and current representatives, agents, attorneys, successors and/or assigns ("Releasers") against LIFESTYLE and each of its directors, officers, members, employees, attorneys, agents, parents, and subsidiaries, divisions, customers and all other entities downstream from LIFESTYLE who received the Covered Products and/or are subsequently in the distribution chain of any Covered Product, and the predecessors, successors, and assigns of any of them (collectively, "Released Parties"). Except as otherwise provided herein, the Davia Releasers hereby fully release and discharge the Released Parties from any and all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted from the sale of the Covered Products regarding up to, and including, the Effective Date (collectively, the "Released Claims"). In further consideration of the promises and agreements herein contained, and for so long as LIFESTYLE remains in compliance with the terms of this Agreement, Davia on behalf of herself, her past and current representatives, agents, attorneys, successors and/or assigns hereby waives all of Davia's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Davia may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees, and attorneys' fees,-- limited to and arising under Proposition 65 with respect to the DEHP in the Covered Products manufactured,

distributed, sold and/or offered for sale by LIFESTYLE before the Effective Date (collectively “claims”), against LIFESTYLE and Released Parties. This release specifically does not cover Ace Hardware Corporation or Primitives by Kathy, Inc.

5.1.2 Davia also, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns, provides a general release and waiver which shall be effective as a full and final accord and satisfaction, and as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Davia, 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 distributed or sold by LIFESTYLE or Released Parties before the Effective Date, and for all actions taken and statements made (or that could have been taken or made) by Defendants and their attorneys 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 and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns 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.

5.1.3 This section 5.1 release shall not extend upstream to any entities, other than LIFESTYLE, that manufactured the Covered Products or any component parts thereof, or any

distributors or suppliers who sold the covered products or any component parts thereof to LIFESTYLE.

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

LIFESTYLE, on behalf of themselves, and their agents, representatives, attorneys, successors, and/or assignees, hereby waive 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 it in this matter, or negotiating this Agreement. LIFESTYLE acknowledges that they are 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 RELEASING PARTY.

LIFESTYLE expressly waives and relinquishes any and all rights and benefits which they may have under, or which may be conferred on them 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 they 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.

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

## **6. ENFORCEMENT**

Prior to bringing any motion, order to show cause, or other proceeding to enforce Proposition 65 or any terms of this Agreement relating to the alleged sale in California of any

Covered Product without a warning and which is alleged to not be Phthalate Free, in actual or alleged violation of this Agreement, Davia shall provide a Notice of Violation (“NOV”) to LIFESTYLE. The NOV shall include, for each Covered Product alleged to be violation of this Agreement: the date of alleged violations(s), place of sale, date and proof of purchase (if relevant), 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 agents or her counsel if, within 30 days of receiving such NOV, LIFESTYLE demonstrates (1) that the Covered Product was manufactured distributed, sold or offered for sale by LIFESTYLE before May 1, 2023; or (2) that LIFESTYLE directed the retailer or distributor of the Covered Product to take corrective action by placing an appropriate warning on the Covered Product(s) compliant with Section 3.3 of this Agreement following service of the NOV; or (3) that the Covered Products are Phthalate Free.

## **7. SEVERABILITY**

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of the enforceable provisions remaining, after express consent of the Parties, shall not be adversely affected and shall remain in full force and effect.

## **8. GOVERNING LAW**

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

## **9. 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 LIFESTYLE:

Matthew Kevin Fales  
Managing Member  
9045 Adams Avenue  
Huntington Beach, CA 92646

With a copy to its counsel:

Philip W. Green  
Green, Steel & Albrecht, LLP  
19800 MacArthur Boulevard, Suite 1000  
pgreen@gsaattorneys.com

For Davia to:

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

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.

#### **10. 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).

#### **11. MODIFICATION**

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

#### **12. 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. 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.

#### **13. ATTORNEY'S FEES**

**13.1** 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.

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

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

**14. NEUTRAL CONSTRUCTION**

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

**15. 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.

**16. AUTHORIZATION**

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

**IT IS SO AGREED**

<p>Dated: November <u>6</u>, 2024</p> <p>DocuSigned by:  179363DE397A43F Matthew Kevin Fales Managing member Lifestyle Davis, LLC</p>	<p>Dated: November __, 2024</p> <p>_____ Susan Davia</p>
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**16. AUTHORIZATION**

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

**IT IS SO AGREED**

<p>Dated: November __, 2024</p> <p>_____</p> <p>Matthew Kevin Fales Managing member Lifestyle Davis, LLC</p>	<p>Dated: November <u>7</u>, 2024</p> <p> _____ Susan Davia</p>
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