

1 Gregory M. Sheffer, State Bar No. 173124
SHEFFER LAW FIRM
2 81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941
3 Telephone: 415.388.0911
Facsimile: 415.388.9911

4 Attorneys for Plaintiff
5 SUSAN DAVIA

FILED

OCT - 5 2016

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

7 SUPERIOR COURT OF THE STATE OF CALIFORNIA

8 FOR THE COUNTY OF MARIN

9 UNLIMITED CIVIL JURISDICTION

11 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 GORDON COMPANIES, INC. and DOES 1-
15 150,

16 Defendants.

Case No. CIV1504316

**JUDGMENT ON PROPOSITION 65
SETTLEMENT**

Case Filed: November 30, 2015

Trail Date: None Assigned

1 In the above-entitled action, Plaintiff Susan Davia and Defendant Gordon Companies,
2 Inc., having agreed through their respective counsel that a judgment be entered pursuant to the
3 terms of the Settlement Agreement and Stipulation to Judgment entered into by the parties in
4 resolution of this Proposition 65 action, and following the issuance of an order approving the
5 Parties' Settlement Agreement and Stipulation to Judgment on this day, IT IS HEREBY
6 ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety Code § 25249.7(f)(4)
7 and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance with the terms of
8 the Stipulation to Judgment attached hereto as Exhibit A. By stipulation of the parties, the Court
9 will retain jurisdiction to enforce the settlement under Code of Civil Procedure § 664.6.

10 **IT IS SO ORDERED.**

ROY O. CHERNUS

11 Dated: OCT - 5 2016

Honorable Roy O. Chernus
Judge Of The Superior Court

EXHIBIT A

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Attorneys for Plaintiff
SUSAN DAVIA

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

SUSAN DAVIA,
Plaintiff,
v.
GORDON COMPANIES, INC. and DOES 1-150,
Defendants.

Case No. CIV 1504316
PROPOSITION 65 SETTLEMENT AGREEMENT
Action Filed: November 30, 2015

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1. INTRODUCTION

1.1 The Parties

This settlement agreement and Consent to Judgment (“Agreement” or “Consent Judgment”) is entered into by and between noticing party Susan Davia, (“Davia”) and defendant Gordon Companies, Inc. (“GORDON”) with Davia and GORDON 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 Gordon Companies, Inc.

GORDON 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”). GORDON is alleged to have been responsible for the distribution and/or sale of the products subject to this Agreement.

1.4 General Allegations

In the captioned action, Davia alleges that GORDON participated in the distribution and/or sale, in the State of California, of a Sterling supplied 50 Light PVC Window Sculpture Product that is alleged to expose users to The Listed Chemical without first providing “clear and reasonable warning” under Proposition 65. Lead is listed as a reproductive and developmental toxin under Proposition 65 and is referred to hereafter as the “Listed Chemical” or “Lead”. GORDON alleges that it is a retailer of products manufactured by other entities, on which entities it relies to ensure compliance with all laws, including Proposition 65, and that all products it has sold into California were or were represented to it to be in compliance with Proposition 65 and that any sales of the subject Covered Products into California were de minimis.

1 **1.5 Notice of Violation and Complaint**

2 On September 1, 2015, and October 29, 2015, Davia served GORDON and various public
3 enforcement agencies with a document entitled “60-Day Notice of Violation” that provided
4 public enforcers and the noticed entities with notice of alleged violations of Health & Safety
5 Code § 25249.6 for failing to warn California consumers of the presence of the Listed Chemical
6 in the Sterling supplied 50 Light PVC Window Sculpture product sold in California (AG Notices
7 2015-00901 and 2015-01145)(collectively the “Notices”). GORDON received each of the Notices.
8 On or about November 30, 2015, Plaintiff filed the complaint in the captioned action based on the
9 allegations set forth in the Notices (the “Complaint”).

10 The Parties represent that, as of the date each executes this Consent Judgment, it is not
11 aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action
12 related to The Listed Chemical in the Covered Products, as identified in the 60-Day Notices.

13 **1.6 No Admission**

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

1 **1.7 Consent to Jurisdiction**

2 For purposes of this Consent Judgment only, the Parties stipulate that the Marin County
3 Superior Court has jurisdiction over GORDON as to the allegations in the Notices and
4 Complaint, that venue is proper in County of Marin, and that the Marin County Superior Court
5 has jurisdiction to enforce the provisions of this Consent Judgment. As an express part of this
6 Agreement, pursuant to Code of Civil Procedure Section 664.6 the Marin County Superior Court
7 has jurisdiction over the parties to enforce this Consent Judgment until performance in full of the
8 terms of the Agreement.

9 **2. DEFINITIONS**

10 **2.1** The term “Products” or “Covered Products” shall mean any Sterling Supply
11 Company (“Sterling”) supplied 50 Light PVC Window Sculpture products, including
12 #01781624816.

13 **2.2** “Effective Date” shall mean July 1, 2016.

14 **3. INJUNCTIVE-TYPE RELIEF**

15 **3.1 Products No Longer in GORDON’s Control**

16 No later than the Effective Date, GORDON shall send a letter, electronic or otherwise
17 (“Notification Letter”) to: (1) each California customer to which GORDON, after October 1, 2014,
18 supplied any Covered Products (excluding Plaintiff or her counsel); and (2) any California
19 customer and/or retailer that GORDON reasonably understands or believes has any inventory
20 of Covered Products for resale in California as of the Effective Date (if any). The Notification
21 Letter shall advise the recipient that the Covered Products “contain the Listed Chemical, a
22 chemical known to the State of California to cause birth defects or other reproductive harm,” and
23 request that the recipient label the Covered Products remaining in inventory for sale in
24 California, or to California Customers, pursuant to Section 3.2. The Notification Letter shall
25 require a response from the recipient within 15 days, confirming whether the Covered Products
26 will be labeled or returned. GORDON shall maintain records of all correspondence or other
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1 communications generated pursuant to this Section (if any) for two years after the Effective Date
2 and shall promptly produce copies of such records upon Davia's written request.

3 **3.2 Product Reformulation Commitment**

4 **3.2.1** As GORDON is only the retailer of the Covered Product, and is supplied with such
5 product by Sterling who manufactures or distributes the Product, GORDON shall have no
6 reformulation obligations under this agreement.

7 **3.3 Product Warnings**

8 GORDON certifies that it no longer maintains or controls any inventory of any Covered
9 Product. . If, after the Effective Date, GORDON happens to come into possession or control of
10 any Covered Product, it agrees that it will not sell such product to any California customer or to
11 any customer that GORDON reasonably understand maintains any retail outlet in California
12 unless such Product complies with Proposition 65.

13 **4. MONETARY PAYMENTS**

14 **4.1 Civil Penalty**

15 As a condition of settlement of all the claims referred to in this Consent Judgment,
16 GORDON shall pay a total of \$1,600 in civil penalties in accordance with California Health &
17 Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of
18 Environmental Health Hazard Assessment ("OEHHHA") and the remaining 25% of the penalty
19 remitted to Davia.

20 **4.2 Augmentation of Penalty Payments**

21 For purposes of the penalty assessment under this Agreement, Davia is relying entirely
22 upon GORDON and its counsel for accurate, good faith reporting to Davia of the nature and
23 amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia
24 discovers and presents to GORDON evidence that the Covered Products have been distributed
25 by GORDON in sales volumes to California materially different than those identified by
26 GORDON prior to execution of this Agreement, then the Parties shall have a period of 30 days to
27 meet and confer concerning such evidence, and Gordon shall have the opportunity to present to
28

1 Plaintiff any evidence to the contrary. If the Parties can agree on an appropriate disposition,
2 then Gordon shall submit payment of any agreed additional civil penalties and attorney's fees
3 related to investigating and alleging sales activity materially different from that disclosed by
4 Gordon prior to the execution of this Agreement within 30 days in accordance with the method
5 of payment of penalties and fees specified in Sections 4.1 and 4.4. If the Parties cannot agree on
6 an appropriate disposition within 30 days, Davia shall be entitled to file a formal legal claim for
7 additional penalties according to proof for breach of this contract, and should Davia prevail she
8 shall be entitled to her reasonable attorney fees and costs relating to such claim to the extent
9 consistent with California Code of Civil Procedure Section 1021.5. Should GORDON prevail in
10 opposing any such claim, Gordon shall be entitled to its reasonable attorney's fees in opposing
11 the claim.

12 **4.3 Reimbursement of Davia's Fees and Costs**

13 The Parties acknowledge that Davia and her counsel offered to resolve this dispute
14 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby
15 leaving this fee issue to be resolved after the material terms of the agreement had been settled.
16 GORDON then expressed a desire to resolve the fee and cost issue shortly after the other
17 settlement terms had been finalized. The Parties then attempted to (and did) reach an accord on
18 the compensation due to Davia and her counsel under general contract principles and the
19 private attorney general doctrine codified at California Code of Civil Procedure section 1021.5,
20 for all work of any kind performed in this matter, including but not limited to investigative and
21 expert costs, and attorney's fees incurred through the preparation and filing of a motion to
22 approve this Consent Judgment, and obtaining the Court's approval and entry of this Consent
23 Judgment, except any fees that may be incurred on appeal. Under these legal principles,
24 GORDON Corporation shall pay Davia's counsel the total all-inclusive amount of \$14,000 for all
25 fees and costs incurred investigating, litigating and enforcing this matter through the Court's
26 entry of this Consent Judgment. Such payment shall be made payable to "Sheffer Law Firm".
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1 **4.4 Payment Procedures**

2 GORDON shall deliver all settlement payment funds required by this Consent Judgment
3 to its counsel within one week of the date that this Agreement is fully executed by the Parties.
4 GORDON’s counsel shall confirm receipt of settlement funds in writing to plaintiff’s counsel
5 within two business days of receipt of same and, thereafter, hold the amounts paid in trust until
6 such time as the Court approves this settlement as set forth in Section 7.

7 Within five business days of the date the Court approves this Consent Judgment,
8 defendant’s counsel shall deliver the settlement payments it has held in trust to plaintiff’s
9 counsel as follows:

- 10 1. a civil penalty check in the amount of \$1,200 payable to “OEHHA” (EIN: 68-
11 0284486, Memo line “Prop 65 Penalties, 2015-01145”);
12 2. a civil penalty check in the amount of \$400 payable to “Susan Davia” (EIN: to be
13 supplied, Memo line “Prop 65 Penalties, 2015-01145”); and
14 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the
15 amount of \$14,000 payable to “Sheffer Law Firm” (EIN 55-08-58910, Memo line “2015-
16 01145”)

17 Plaintiff shall have sole responsibility for delivering OEHHA’s portion of the civil penalty
18 payment to OEHHA. All penalty and fee/cost payments shall be delivered to the Sheffer
19 Law Firm at the following address:

20 Sheffer Law Firm
21 Attn: Proposition 65 Controller
22 81 Throckmorton Ave., Suite 202
23 Mill Valley, CA 94941

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

27 While the obligations of this agreement are binding upon execution, the Release of
28 GORDON in Section 5 shall not become effective until after all monetary payments have been
made by GORDON and all funds have cleared.

1 **4.5 Issuance of 1099 Forms**

2 After this Agreement has been executed and the settlement funds have been transmitted to
3 Davia’s counsel, GORDON shall issue three separate 1099 forms, as follows:

4 (a) The first 1099 shall be issued to the Office of Environmental Health Hazard
5 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the
6 amount paid pursuant to Sections 4.1 and 4.2 (if required);

7 (b) The second 1099 shall be issued to Davia in the amount paid pursuant to
8 Sections 4.1 and 4.2 (if required), whose address and tax identification number
9 shall be furnished upon request; and

10 (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in
11 the amount paid pursuant to Section 4.3.

12 **4.6 Other Settlements for the same products.** In the event Davia reaches a
13 settlement or judgment against Sterling Supply Company on the basis of a violation of
14 Proposition 65, Gordon may apply to Davia, through her counsel, for a refund to Gordon of up
15 to one half of the amounts paid by Gordon under paragraphs 4.1, 4.2 and 4.3 so as to avoid
16 Davia’s collection of duplicative payments for the same Covered Products. Such refund will
17 only be upon proof by Gordon that Gordon sold Covered Products from Sterling Supply
18 Company within two years prior to the Effective Date. Any such refund shall be capped and
19 limited to one half of the monies paid to Davia and her counsel under this Agreement This
20 provision is in recognition of the facts that Gordon is not the original manufacturer of Covered
21 Products.

22 **5. RELEASES**

23 **5.1 DAVIA’S RELEASE OF GORDON**

24 5.1.1 This Consent Judgment is a full, final and binding resolution between Davia,
25 on behalf of herself and the public interest, and GORDON of any violation of Proposition 65 that
26 was or could have been asserted by Davia on behalf of herself, her representatives and attorneys,
27 against GORDON, its directors, officers, employees, attorneys, and each entity to whom
28 GORDON directly or indirectly distributes or sells Covered Products, including, but not limited,

1 to Retailers, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative
2 members, and licensees (“Releasees”), based on their failure to warn about alleged exposures to
3 the Listed Chemical contained in the Covered Products that were manufactured, distributed,
4 sold and/or offered for sale by GORDON in California before the Effective Date.

5 5.1.2 In further consideration of the promises and agreements herein contained,
6 Davia on behalf of herself, her past and current representatives and attorneys, hereby waives all
7 Davia’s rights to institute or participate in, directly or indirectly, any form of legal action and
8 releases all claims that Davia may have, including, without limitation, all actions, and causes of
9 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
10 losses, or expenses -- including, but not limited to, investigation fees, expert fees, and attorneys’
11 fees, but exclusive of fees and costs on appeal -- arising under Proposition 65 with respect to the
12 Listed Chemical in the Covered Products manufactured, distributed, sold and/or offered for sale
13 by GORDON before the Effective Date (collectively “Claims”), against GORDON and the
14 Releasees.

15 5.1.3 Davia, in her individual capacity, provides a general release herein, on
16 behalf of herself, her past and current representatives and attorneys, which shall be effective as a
17 full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,
18 expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Davia, of any
19 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the
20 subject matter of the Notice and Complaint as to Covered Products manufactured, distributed or
21 sold by GORDON or the Releasees. Davia, in her individual capacity, also provides a general
22 release, on behalf of herself, her past and current representatives and attorneys, to GORDON
23 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
24 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and
25 demands of Davia, of any nature, character or kind, known or unknown, suspected or
26 unsuspected, arising out of the California sale by GORDON of any product, other than Covered
27 Products, prior to the Effective Date. Davia acknowledges that she is familiar with section 1542
28 of the California civil code, which provides as follows:

1 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES
2 NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
3 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
4 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

13 This Section 5.1 release is expressly limited to any alleged violations by GORDON that
14 occur prior to the Effective Date, and does not release GORDON or any Releasee, entity or
15 individual besides GORDON from any liability for any violation of Proposition 65 regarding the
16 Covered Products that occurs after the Effective Date.

17 The Parties further understand and agree that this Section 5.1 release shall not extend
18 upstream to any entities, other than GORDON, that manufactured the Covered Products or any
19 component parts thereof, or any distributors or suppliers who sold the Covered Products or any
20 component parts thereof to GORDON.

21 The Parties further expressly understand and agree that this Section 5.1 release shall not
22 extend upstream to Sterling Supply Company, Inc., S&L Holdings, Inc., the Gerson Companies
23 or any company that is directly or indirectly responsible or liable for the manufacture or
24 distribution of Covered Products, or any component parts thereof, to GORDON.

25 **5.2 GORDON's Release of Davia**

26 The Release by Davia is mutual. GORDON, on behalf of itself, its past and current
27 agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all
28 claims against Davia and her attorneys and other representatives through the Effective Date, for

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

6
7 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES
8 NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
9 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY
10 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

18 **6. SEVERABILITY**

19 If any of the provisions of this Agreement are found by a court to be unenforceable, the
20 validity of the enforceable provisions remaining shall not be adversely affected so long as the
21 parties mutually agree, unless the Court finds that any unenforceable provision is not severable
22 from the remainder of the Agreement.

23 **7. COURT APPROVAL**

24 This Agreement is effective upon execution but must also be approved by the Court. If
25 this Consent Judgment is not approved by the Court in its entirety, the Parties shall meet and
26 confer to determine whether to modify the terms of the Agreement and to resubmit it for
27 approval. In meeting and conferring, the Parties agree to undertake any actions reasonably
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1 necessary to amend and/or modify this Agreement in order to further the mutual intention of
2 the Parties in entering into this Agreement.

3 The Agreement shall become null and void if, for any reason, it is not approved and
4 entered by the Court, as it is executed, within one year after it has been fully executed by all
5 Parties. If the Agreement becomes null and void after any payment of monies under this
6 agreement to Sheffer Law Firm, such monies shall be returned to defendant by payment of such
7 monies to counsel of defendant in trust for that defendant.

8 If this Agreement is not entered by the Court, and the Parties have exhausted their meet
9 and confer efforts pursuant to this Section 7, upon 15 days written notice, the law firm holding
10 Settling Defendant's funds in trust shall refund any and all payments made into its trust account
11 by Settling Defendant as requested.

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13 **8. GOVERNING LAW**

14 The terms of this Consent Judgment shall be governed by the laws of the State of
15 California.

16 **9. NOTICES**

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

19 For The Gordon Companies, Inc.:

20
21 David Gordon, President
22 Gordon Companies, Inc.
23 85 Innsbruck Drive
24 Cheektowaga NY, 14227

25 With a copy to its counsel:

26 J. Robert Maxwell
27 Rogers Joseph O'Donnell PLC
28 311 California Street, 10th Floor
San Francisco, CA 94104

1 For Davia to:
2 Proposition 65 Coordinator
3 Sheffer Law Firm
4 81 Throckmorton Ave., Suite 202
5 Mill Valley, CA 94941

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

8 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

11 **11. MODIFICATION**

12 This Consent Judgment may only be modified by written stipulation of the Parties..

13 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

14 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed
15 motion is required to obtain judicial approval of this Consent Judgment, and that Davia and her
16 counsel will prepare and file such motion within a reasonable time after the full execution of this
17 Agreement. In furtherance of obtaining such approval, Davia and GORDON, and their
18 respective counsel, agree to mutually employ their best efforts to support the entry of this
19 Agreement as a Consent Judgment and obtain approval of the Agreement - sufficient for the
20 Court to render an order approving this agreement in a timely manner. Any effort by
21 GORDON to impede judicial approval of this Agreement shall subject it to liability for attorney's
22 fees and costs incurred by Plaintiff or her counsel in their efforts to meet or oppose GORDON's
23 impeding conduct.

24 **13. ENTIRE AGREEMENT**

25 This Consent Judgment contains the sole and entire agreement and understanding of the
26 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
27 negotiations, commitments, and understandings related hereto. No representations, oral or
28 otherwise, express or implied, other than those contained herein have been made by any Party

1 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be
2 deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or
3 termination of this Agreement shall be binding unless executed in writing by the Party to be
4 bound. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute
5 a waiver of any of the other provisions whether or not similar, nor shall such waiver constitute a
6 continuing waiver

7 **14. ATTORNEY'S FEES**

8 **14.1** Should Davia prevail on any motion, application for order to show cause or other
9 proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable
10 attorney fees and costs incurred as a result of such motion, order or application, consistent with
11 C.C.P. § 1021.5. Should GORDON prevail on any motion, application for order to show cause or
12 other proceeding to oppose or enforce a violation of this Agreement, GORDON shall be entitled
13 to its reasonable attorney fees and costs incurred as a result of such motion, order or application
14 upon a finding that Davia's prosecution of the motion or application lacked substantial
15 justification. For purposes of this Agreement , the term substantial justification shall carry the
16 same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

17 **14.2** Except as otherwise specifically provided herein, each Party shall bear its own
18 costs and attorney's fees in connection with the Notice, the Complaint, and obtaining Court
19 approval of this Consent Judgment.

20 **14.3** Nothing in this Section shall preclude a Party from seeking an award of sanctions
21 pursuant to applicable law for violation of the terms of this Consent Judgment.

22 **15. NEUTRAL CONSTRUCTION**

23 Both Parties and their counsel have participated in the preparation of this Consent
24 Judgment, and this Agreement is the result of the joint efforts of the Parties. This Agreement
25 was subject to revision and modification by the Parties and has been accepted and approved as
26 to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity
27 existing in this Agreement shall not be interpreted against any Party as a result of the manner of
28 the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule

1 of construction providing that ambiguities are to be resolved against the drafting Party should
2 not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby
3 waive California Civil Code Section 1654.

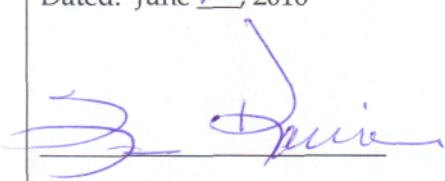
4 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

8 **17. AUTHORIZATION**

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

12 **IT IS SO AGREED**

| | |
|---|---|
| <p>14 Dated: June __, 2016</p> <p>15</p> <p>16</p> <p>17 _____</p> <p>18 David Gordon, President Gordon Companies, Inc.</p> <p>19</p> <p>20</p> <p>21</p> | <p>14 Dated: June 15, 2016</p> <p>15</p> <p>16 </p> <p>17 _____</p> <p>18 Susan Davia</p> <p>19</p> <p>20</p> <p>21</p> |
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6 format (PDF), each of which shall be deemed an original, and all of which, when taken together,
7 shall constitute one and the same document.

8 **17. AUTHORIZATION**

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

12 **IT IS SO AGREED**

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| <p>14 Dated: June <u>16</u>, 2016</p> <p>15</p> <p>16 </p> <p>17</p> <p>18 David Gordon, President Gordon Companies, Inc.</p> <p>19</p> <p>20</p> <p>21</p> | <p>Dated: June __, 2016</p> <p>_____</p> <p>Susan Davia</p> |
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