

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

5 Attorneys for Plaintiff
6 SUSAN DAVIA

FILED

JAN 27 2017

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

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION

11
12
13 SUSAN DAVIA,

14 Plaintiff,

15 v.

16 LEEBER LIMITED U.S.A. and DOES 1-150,

17 Defendants.

Case No. CIV 1601963

JUDGMENT ON PROPOSITION 65
SETTLEMENT

Action Filed: June 3, 2016
Trial Date: None Assigned

1 In the above-entitled action, Plaintiff Susan Davia and Defendant Leeber Limited U.S.A.,
2 having agreed through their respective counsel that a judgment be entered pursuant to the terms
3 of the Settlement Agreement entered into by the parties in resolution of this Proposition 65
4 action, and following the issuance of an order approving the Parties' Settlement Agreement on
5 this day, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health &
6 Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in
7 accordance with the terms of the Settlement Agreement attached hereto as Exhibit A. By
8 stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under Code
9 of Civil Procedure § 664.6.
10

11 IT IS SO ORDERED.

PAUL M. HAAKENSON

12
13 Dated: JAN 27 2017

14 Honorable Paul Haakenson
15 Judge Of The Superior Court
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

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

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF MARIN
9 UNLIMITED CIVIL JURISDICTION

10
11 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 LEEBER LIMITED U.S.A. and DOES 1-150,

15 Defendants.

Case No. CIV 1601963

**SETTLEMENT AGREEMENT PURSUANT
TO SECTION 664.6 C.C.P. AS TO
DEFENDANT LEEBER LIMITED USA**

Action Filed: June 3, 2016
Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and
4 between plaintiff Susan Davia, (“Davia”) and defendant Leeber Limited USA (“Leeber” or “Settling
5 Defendant”) with Davia and Leeber individually referred to as a “Party” and collectively referred to
6 as the “Parties.” The Parties enter this settlement agreement pursuant to C.C.P. Section 664.6.

7 **1.2 Plaintiff Susan 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 Leeber Limited USA**

12 Leeber Limited USA is a person in the course of doing business for purposes of the Safe
13 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et*
14 *seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Davia alleges that Leeber participated in the manufacture (or other acquisition), distribution
17 and/or sale, in the State of California, of brass-handled copper mug products, which products
18 exposed users to Lead without first providing any “clear and reasonable warning” under Proposition
19 65. Lead is listed as a reproductive toxin pursuant to Proposition 65. Lead shall hereinafter be
20 referred to as the “Listed Chemical.”

21 **1.5 Notice of Violation**

22 On March 22, 2016, Davia served Leeber Limited USA and various public enforcement
23 agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers and
24 the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to
25 warn consumers of the presence of Lead, a toxic chemical allegedly found in the Covered Products
26 sold in California. Leeber received the March 22, 2016, 60-Day Notice of Violation.
27
28

1 Neither Leeber nor Davia, as of the date it executes this Agreement, is aware of any public
2 enforcer that is diligently prosecuting a Proposition 65 enforcement action related to Lead in the
3 Covered Products, as identified in Davia's 60-Day Notice to Leeber.

4 **1.6 Complaint**

5 On June 3, 2016, Davia, acting in the interest of the general public in California, filed a
6 Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV
7 1601963, alleging violations by Leeber and Does 1-150 of Health & Safety Code § 25249.6 based, *inter*
8 *alia*, on the alleged exposures to Lead contained in certain copper drinkware with brass handles
9 (hereafter "Complaint" or "Action").

10 **1.7 No Admission**

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

24 **1.8 Other Proceedings**

25 Nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument
26 or defense that the Parties have in any other legal proceeding.

27 ///

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1.9 Consent to Jurisdiction

For purposes of this Agreement only, the Parties stipulate, pursuant to C.C.P. Section 664.6, that the Marin County Superior Court has jurisdiction over Leeber and Davia as to the allegations in the 60-Day Notice and Complaint received from Davia, and this Agreement, that venue is proper in County of Marin, and that the Marin County Superior Court has jurisdiction to enforce the provisions of this Agreement.

2. DEFINITIONS

2.1 The term "Products" or "Covered Products" shall mean all copper mugs with brass handles manufactured, imported, distributed and/or sold by Leeber Limited USA (including, but not limited to, 90381 and 90391).

2.2 The term "Lead Free" Covered Products shall mean every component of any Covered Product containing less than or equal to 100 parts per million ("ppm") of Lead as determined using Environmental Protection Agency ("EPA") testing methodologies 3050B and 6010B, or equivalent methodologies utilized by Federal or State agencies for the purpose of determining Lead content in a solid substance.

2.3 "Effective Date" shall mean the date the Court approves this Agreement.

3. INJUNCTIVE RELIEF

3.1 Inventory

No later than December 15, 2016, Leeber shall send a letter, electronic or otherwise, to those of its customers located in California that Leeber reasonably believes may have possession or inventory of Covered Products and inform the customers that "the brass handles of the copper mug product contain lead, a chemical known to the State of California to cause birth defects or other reproductive harm." These customers shall include, but not be limited to, Food Service Warehouse, Rumors Engraving, Engrave N Things, I leoni and Love Detailed. The letter shall advise each such customer that they may return to Leeber, at Leeber's sole expense, all units of the Covered Product and detail the procedure for such return.

1 Leeber further agrees that any of the Covered Products it has currently in its own inventory,
2 or which are returned as noted hereinabove, will not be sold or distributed, and that said Covered
3 Products shall be destroyed by February 1, 2017. Leeber also agrees that it will cause the metals from
4 such destroyed Covered Products to be recycled.

5 Further, Leeber agrees that if Leeber receives an order for any of the Covered Products
6 submitted to it in any manner (e.g., by mail order, telephone call, or internet), Leeber will inform the
7 potential purchaser that Leeber no longer sells the Covered Products and will not sell or distribute
8 the Covered Products.

9 **3.2 Product Reformulation Commitment**

10 **3.2.1** Leeber represents that the Covered Products did not comprise a significant portion of
11 its United States product distribution. Accordingly, Leeber has determined that it will no longer
12 manufacture, cause to be manufactured, order or cause to be ordered any Covered Products for sale
13 in the United States. However, if at any time after the Effective Date Leeber decides to manufacture
14 or cause to be manufactured, order or cause to be ordered, or distribute or cause to be distributed
15 any Covered Product, then such Covered Product shall be Lead Free. If at any time after the Effective
16 Date Leeber decides to manufacture or cause to be manufactured, order or cause to be ordered, or
17 distribute or cause to be distributed any Covered Product, Leeber shall provide the Lead Free
18 concentration standards of Section 2.2 to any manufacturer or vendor of any Covered Product and
19 the brass components thereof and instruct each such entity not to incorporate any raw or component
20 materials that do not meet the Lead Free concentration standards of Section 2.2 into any Covered
21 Product. Prior to any such future manufacture of any Covered Product, Leeber shall obtain a written
22 confirmation and accompanying laboratory test result from the manufacturer or vendor of any raw
23 material comprising the brass component of the Covered Product demonstrating compliance with
24 the Lead Free concentration standard for each such material. Prior to purchase or other acquisition
25 of any Covered Product from any manufacturer or vendor, Leeber shall obtain a written confirmation
26 and accompanying laboratory test result from the new vendor demonstrating compliance with the
27 Lead Free concentration standard in all materials comprising the Covered Product and a post-
28

1 production sample of Covered Product. For every Covered Product Leeber manufactures, causes to
2 be manufactured, orders, causes to be ordered or otherwise obtains from a new vendor after the
3 Effective Date, Leeber shall maintain, for a period of three years, copies of all testing of such products
4 demonstrating compliance with this section, shall maintain copies of all vendor correspondence
5 relating to the Lead Free concentration standards and shall produce such copies to Davia within
6 thirty (30) days of receipt of written request from Davia. This obligation to maintain records shall
7 terminate three years after the Effective Date.

8 **4. MONETARY PAYMENTS**

9 **4.1 Civil Penalty**

10 As a condition of settlement of all the claims referred to in this Agreement, Leeber shall pay
11 a total of \$6,000 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1)
12 & (d).

13 **4.2 Augmentation of Penalty Payments**

14 For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon
15 Leeber for accurate, good faith reporting to Davia of the nature and amounts of relevant sales activity.
16 If within nine (9) months of the Effective Date, Davia discovers and presents to Leeber evidence that
17 the Covered Products have been distributed by Leeber in sales volumes materially different than
18 those identified by Leeber prior to execution of this Agreement, then Leeber shall be liable for an
19 additional penalty amount of \$10,000.00. Leeber shall also be liable for any reasonable, additional
20 attorney fees expended by Davia, up to an amount of \$10,000, in discovering such additional retailers
21 or sales. Davia agrees to provide Leeber with a written demand for all such additional penalties and
22 attorney fees under this Section. After service of such demand, Leeber shall have thirty (30) days to
23 agree to the amount of fees and penalties owing by Leeber and submit such payment to Davia in
24 accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4. Should
25 this thirty (30) day period pass without any such resolution between the parties and payment of such
26 additional penalties and fees, Davia shall be entitled to file a formal legal claim additional civil
27

1 penalties pursuant to this section and shall be entitled to all reasonable attorney fees and costs
2 relating to such claim.

3 **4.3 Reimbursement of Davia's Fees and Costs**

4 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
6 issue to be resolved after the material terms of the agreement had been settled. Leeber then expressed
7 a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
8 The Parties then attempted to (and did) reach an accord on the compensation due to Davia and her
9 counsel under general contract principles and the private attorney general doctrine codified at
10 California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees
11 that may be incurred on appeal. Under these legal principles, Leeber shall pay Davia's counsel, on
12 or before the Effective Date, the amount of \$36,000 for fees and costs incurred investigating, litigating
13 and enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating,
14 drafting, and obtaining the Court's approval of this Agreement in the public interest.

15 **4.4 Payment Procedures**

16 Leeber shall deliver all settlement payment checks required by this Agreement to its counsel
17 within one week of the date that this Agreement is fully executed by the Parties. Leeber's counsel
18 shall confirm receipt of settlement checks in writing to plaintiff's counsel and, thereafter, hold the
19 checks until such time as the Court approves this settlement contemplated by Section 7.

20 Within five business days of the date a) the Court approves the settlement and b) Davia's
21 counsel informs counsel for Leeber that the settlement has been approved, Leeber's counsel shall
22 deliver the settlement checks it has held to plaintiff's counsel as follows:

- 23 1. A civil penalty check payable to "OEHHA" (Memo line "Prop. 65 Penalties, 2016-00217"),
24 in the amount of \$4,500;
- 25 2. a civil penalty check payable to "Susan Davia" (Memo line "Prop. 65 Penalties, 2016-
26 00217") in the amount of \$1,500; and
- 27 3. a check payable to "Sheffer Law Firm" (Memo line "Prop. 65 Penalties, 2016-00217") in
28

1 the amount of \$36,000.

2 All Section 4.1 and Section 4.3 payments shall be delivered to the Sheffer Law Firm at the following
3 address:

4 Sheffer Law Firm
5 Attn: Proposition 65 Controller
6 81 Throckmorton Ave., Suite 202
7 Mill Valley, CA 94941

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

11 Leeber shall also pay any civil penalties pursuant to Section 4.2, on or before the date agreed
12 upon by the Parties pursuant to Section 4.2, with a civil penalty check payable to "OEHHA" (Memo
13 line "Prop 65 Penalties, 2016-00217"), in the amount of \$7,500.00 and a civil penalty check payable to
14 "Susan Davia" (Memo line "Prop 65 Penalties, 2016-00217") in the amount of \$2,500.00.

15 Leeber shall also pay attorney fees and costs pursuant to Section 4.2, on or before the date
16 agreed upon by the Parties pursuant to Section 4.2, with by a check payable to "Sheffer Law Firm"
17 (Memo line "2016-00217") in the amount agreed upon by the Parties pursuant to Section 4.2.

18 All Section 4.2 payments shall be delivered to plaintiff's counsel at the following address on
19 or before the date agreed upon by the Parties pursuant to Section 4.2:

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

24 Leeber shall also be liable for payment of interest, at a rate of 10% simple interest, for all
25 amounts due and owing from it under Section 4.2 that are not received by Sheffer Law Firm within
26 five business days of the due date for such payment.
27
28

1 **4.5 Issuance of 1099 Forms**

2 After this Agreement has been executed, Leeber shall transmit to its counsel simultaneously
3 with the checks 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 amount
6 paid pursuant to Sections 4.1 and 4.2;

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

10 (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in the
11 amount paid pursuant to Section 4.2 and Section 4.3.

12 Leeber's counsel shall transmit the 1099 forms to counsel for plaintiff at the same time that it
13 transmits the checks to counsel for plaintiff.

14 **5. CLAIMS COVERED AND RELEASED**

15 **5.1 Davia's Release of Leeber**

16 5.1.1 This settlement agreement is a full, final and binding resolution between Davia and
17 Leeber of any violation of Proposition 65 that was or could have been asserted by Davia against
18 Leeber and each entity to which Leeber directly or indirectly distributed or sold Covered Products,
19 including, but not limited, to downstream distributors, customers and retailers ("Releasees"), based
20 on their failure to warn about alleged exposures to Lead contained in the Covered Products that were
21 manufactured, distributed, sold and/or offered for sale by Leeber or Releasees in California before
22 the Effective Date.

23 5.1.2 In further consideration of the promises and agreements herein contained,
24 Davia, acting on her own behalf and in the public interest, releases Leeber and its current and past
25 directors, officers, employees, and attorneys (collectively "Defendant Releasees"), from all claims for
26 violations of Proposition 65 with respect to the Listed Chemical in the Covered Products
27
28

1 manufactured, distributed, sold and/or offered for sale by Leeber before the Effective Date as set
2 forth in the 60-Day Notice of Violation to Leeber.

3 5.1.3 Davia, on her own behalf and on behalf of her past and current agents,
4 representatives, successors and/or assignees, also provides a general release herein which shall be
5 effective as a full and final accord and satisfaction, as a bar to all claims, actions and causes of action,
6 of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the
7 subject matter of the Notice and Complaint as to Covered Products manufactured, distributed or sold
8 by Leeber or Defendant Releasees prior to the Effective Date. Davia acknowledges that she is familiar
9 with section 1542 of the California civil code, which provides as follows:

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

15 Davia expressly waives and relinquishes any and all rights and benefits that she may have
16 under, or which may be conferred on her by the provisions of Section 1542 of the California Civil
17 Code as well as under any other state or federal statute or common law principle of similar effect, to
18 the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.
19 Davia, on behalf of herself, her past and current agents, representatives, successors and/or assignees,
20 and not in her representative capacity, acknowledges and understands the significance and
21 consequences of this specific waiver of Civil Code § 1542. In furtherance of such intention, excepting
22 Section 4.2, the release hereby given shall be and remain in effect as a full and complete release
23 notwithstanding the discovery or existence of any such additional or different claims or facts arising
24 out of the released matters.

25 The Parties further understand and agree that this Section 5.1 release shall not extend
26 upstream to any entities, other than Leeber, that manufactured the Covered Products or any
27 component parts thereof, or any distributors or suppliers who sold the Covered Products or any
28 component parts thereof to Leeber.

///
///

1 **5.2 Leeber's Release of Davia**

2 Leeber, on behalf of itself, its past and current agents, representatives, successors, and/or
3 assignees, hereby waives any and all claims against Davia and her attorneys and other
4 representatives, for any and all actions taken or statements made (or those that could have been taken
5 or made) by Davia and her attorneys and other representatives, whether in the course of investigating
6 claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the
7 Covered Products. Leeber acknowledges that it is familiar with Section 1542 of the California Civil
8 Code, which provides as follows:

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

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

21 **6. SEVERABILITY**

22 If, subsequent to court approval of this Agreement, any of the provisions of this Agreement
23 are determined by a court to be unenforceable, so long as all parties agree, the validity of the
24 enforceable provisions remaining shall not be adversely affected, unless the Court finds that any
25 unenforceable provision is not severable from the remainder of the Agreement.

26 **7. COURT APPROVAL**

27 This Agreement is effective upon execution but must also be approved by the Court. If this
28 Agreement is not approved by the Court in its entirety, the Parties shall meet and confer to determine

1 whether to modify the terms of the Agreement and to resubmit it for approval. In meeting and
2 conferring, the Parties agree to undertake any actions reasonably necessary to amend and/or modify
3 this Agreement in order to further the mutual intention of the Parties in entering into this Agreement.

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

9 **8. GOVERNING LAW**

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

11 **9. NOTICES**

12 When any Party is entitled to receive any notice under this Agreement, the notice shall be sent
13 by certified mail and electronic mail to the following:

14 For Leeber Limited USA, to:

15 Alice Ho, President
16 Leeber Limited USA
17 115 Pencader Drive
18 Newark, DE 19702

19 With a copy to their counsel:

20 Thomas H. Clarke, Jr.
21 Ropers, Majeski, Kohn & Bentley PC
22 1001 Marshall Street, Suite 500
23 Redwood City CA 94063-2052
24 E-Mail: tclarke@rmkb.com

25 For Davia to:

26 Proposition 65 Coordinator
27 Sheffer Law Firm
28 81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941
E-Mail: sheffesq@gmail.com

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

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

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

6 **11. MODIFICATION**

7 This Agreement may be modified only by written agreement of the Parties or order of the
8 Court after a successful noticed motion of any party.

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

10 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
11 is required to obtain judicial approval of this Agreement. In furtherance of obtaining such approval,
12 Davia and Leeber, and their respective counsel, agree to mutually employ their best efforts to support
13 the entry of this Agreement as a settlement agreement and obtain approval of the Agreement -
14 sufficient to render an order approving this agreement - by the Court in a timely manner. Any effort
15 by Leeber to impede judicial approval of this Agreement shall subject such impeding party to liability
16 for attorney fees and costs incurred by plaintiff or her counsel in their efforts to meet or oppose such
17 impeding conduct.

18 **13. ENTIRE AGREEMENT**

19 This Agreement contains the sole and entire agreement and understanding of the Parties with
20 respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
21 commitments, and understandings related hereto. No representations, oral or otherwise, express or
22 implied, other than those contained herein have been made by any Party hereto. No other
23 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
24 any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall
25 be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions
26 of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether
27 or not similar, nor shall such waiver constitute a continuing waiver
28

1 **14. ATTORNEY'S FEES**

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

8 **14.2** Except as otherwise specifically provided herein, each Party shall bear its own costs
9 and attorney's fees in connection with the Notice.

10 **14.3** Nothing in this Section shall preclude a Party from seeking an award of sanctions
11 pursuant to law.

12 **15. NEUTRAL CONSTRUCTION**

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

21 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

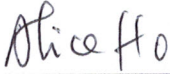
22 This Agreement may be executed in counterparts and by facsimile or portable document format
23 (PDF), each of which shall be deemed an original, and all of which, when taken together, shall
24 constitute one and the same document.

1 **17. AUTHORIZATION**

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

5 **IT IS SO AGREED**

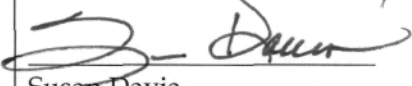
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Dated: December <u>5</u> , 2016  _____ Alice Ho, President Leeber Limited USA	Dated: December __, 2016 _____ Susan Davia
--	--

1 17. AUTHORIZATION

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

5 IT IS SO AGREED

<p>7 Dated: December __, 2016</p> <p>8</p> <p>9 _____</p> <p>10 Alice Ho, President Leeber Limited USA</p>	<p>7 Dated: December <u>5</u>, 2016</p> <p>8</p> <p>9 </p> <p>10 Susan Davia</p>
--	--

6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28