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5 SUSAN DAVIA

FILED

NOV 08 2016

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: J. Chen, Deputy

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 OGGI CORPORATION and DOES 1-150,

15 Defendants.

Case No. CIV 1603015

**JUDGMENT ON PROPOSITION 65
SETTLEMENT**

Action Filed: August 22, 2016
Trial Date: None Assigned

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CONSENT TO JUDGMENT

1 In the above-entitled action, Plaintiff Susan Davia and Defendant OGGI Corporation,
2 having agreed through their respective counsel that a judgment be entered pursuant to the terms
3 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.**

11 Dated: NOV 08 2016

GEOFFREY M. HOWARD

Honorable Geoffrey Howard
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.
OGGI CORPORATION and DOES 1-150,
Defendants.

Case No. CIV 1603015

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

Action Filed: August 22, 2016
Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent to Judgment Settlement Agreement (“Agreement”) is entered into by and
4 between Plaintiff Susan Davia, (“Davia” or “Plaintiff”) and Defendant OGGI Corporation (“OGGI”),
5 with OGGI referred to as “Settling Defendant” and Davia, and OGGI collectively referred to as the
6 “Parties.”

7 **1.2 Plaintiff**

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 Defendants**

12 For purposes of this Agreement, OGGI represents that it employs 10 or more persons and is
13 a person in the course of doing business for purposes of the Safe Drinking Water and Toxic
14 Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Davia alleges that OGGI and Beverages & More, Inc., and BevMo Holdings, LLC (Beverages
17 & More, Inc., and BevMo Holdings, LLC collectively “BevMo”), manufactured, distributed and/or
18 sold, in the State of California, certain types of mugs with brass handles comprised of or made with
19 made with components that exposed users to Lead without first providing “clear and reasonable
20 warning” under Proposition 65. Lead is listed as a reproductive and developmental toxicant
21 pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical” or “Lead.”

22 **1.5 Notice of Violation**

23 On March 22, 2016, Davia represents that she served OGGI and BevMo with a valid and
24 compliant Proposition 65 60-Day Notice of Violation, together with a valid, requisite Certificate of
25 Merit, that provided public enforcers and these entities with notice of alleged violations of Health &
26 Safety Code § 25249.6 for failing to warn consumers of the presence of the Lead in brass-handled
27 beverage mug products sold in California.

28

1 Each BevMo and OGGI received the March 22, 2016, notice of violation (hereafter,
2 collectively, "Notice"). Each Party represent that, as of the date it executes this Agreement, it
3 believes that no public enforcer is diligently prosecuting a Proposition 65 enforcement action
4 related to the Listed Chemical in the covered products, as identified in the Notice.

5 **1.6 Complaint**

6 On August 22, 2016, Davia, acting in the interest of the general public in California, filed a
7 Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV
8 1603015, alleging violations by OGGI, and Does 1-150 of Health & Safety Code § 25249.6 based, *inter*
9 *alia*, on the alleged consumer exposures to Lead contained in the Covered Products (defined below).

10 **1.7 No Admission**

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

24 **1.8 Consent to Jurisdiction**

25 For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction
26 over OGGI as to the obligations contained in the Agreement, that venue is proper in County of
27 Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Agreement.
28 As an express part of this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was

1 filed shall retain jurisdiction over the parties to enforce this Agreement until performance in full of
2 the terms of the settlement.

3 **2. DEFINITIONS**

4 **2.1** The term “Covered Product” means any OGGI brand copper or other beverage mug
5 product with brass handles including, but not limited to, 20 oz. Moscow Mule Mug (#9010 and
6 9007),, 2 oz. Mini Moscow Mule Shot Mugs (#9008).

7 **2.2** The term “Effective Date” shall mean the date upon which Davia serves notice, via
8 email on counsel for OGGI, of a Court Order approving this Agreement.

9 **2.3** The term “Lead Free” products shall mean Covered Products containing materials
10 on any outer surface of the exterior or interior of the Covered Product that may be handled,
11 touched or mouthed by a consumer, and which surface materials each yield less than 100 parts per
12 million (“ppm”) lead when such surface material is analyzed pursuant to EPA testing
13 methodologies 3050B and 6010B, or equivalent methodologies utilized by Federal or State agencies
14 for the purpose of determining lead content in a solid substance.

15 **2.4** “Manufactured” and “manufactures” have the meaning defined in Section 3(a)(10) of
16 the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)], as amended from time to time.

17 **3. NON-MONETARY RELIEF**

18 **3.1 Formulation Commitment**

19 OGGI represents that they have provided all vendors of Covered Product the Lead Free
20 concentration standards of Section 2.3 and instructed its vendors not to incorporate any raw or
21 component materials into such product, especially brass materials, that do not meet or exceed the
22 Lead Free concentration standards of Section 2.3. As of the execution of this Agreement, OGGI
23 shall continue to provide all vendors of Covered Product the Lead Free concentration standards of
24 Section 2.3 and instruct its vendors not to incorporate any raw or component materials into such
25 product, especially brass materials, that do not meet or exceed the Lead Free concentration
26 standards of Section 2.3

27 **3.1.1** As of the execution of this Agreement, should OGGI arrange for the manufacture or
28 other production of Covered Product with a new vendor, OGGI shall provide such vendor the Lead

1 Free concentration standards of Section 2.3 and instruct its vendors not to incorporate any raw or
2 component materials into such product, especially brass materials, that do not meet or exceed the
3 Lead Free concentration standards of Section 2.3.

4 **3.1.2** After October 31, 2016, OGGI shall not manufacture or cause to be manufactured,
5 order or cause to be ordered, distribute or cause to be distributed or otherwise sell any Covered
6 Product that is not Lead Free. For every Lead Free Covered Product OGGI manufactures, causes to
7 be manufactured, orders, causes to be ordered or otherwise sells after October 31, 2016, OGGI shall
8 maintain copies of all testing of such products demonstrating compliance with this section, and
9 within fifteen (15) days of receipt of written request from Davia, OGGI shall provide copies of
10 testing reports demonstrating such compliance. Davia agrees that such requests shall be
11 reasonable, and will not be made more than once in 2016, and once annually thereafter, absent good
12 cause.

13 **3.2 Previously Obtained or Distributed Covered Products.**

14 **3.2.1** Customer Notification - No later than the September 15, 2016, OGGI shall send a
15 letter, electronic or otherwise ("Notification Letter") to: (1) its primary contact at Beverages & More,
16 Inc./BevMo! and Bed Bath & Beyond, Inc., (2) each customer to which it, after January 1, 2015,
17 supplied any Covered Product and (3) any other customer and/or retailer that OGGI reasonably
18 understands or believes has any inventory of Covered Product. The Notification Letter shall advise
19 the recipient that OGGI has reviewed test reports demonstrating that the Covered Product contains
20 Lead, a chemical known to the State of California to cause birth defects and other reproductive
21 harm. The Notification letter shall direct recipient that all Covered Product must be labelled with a
22 clear and reasonable Proposition 65 warning before it is sold in the California market. The
23 Notification Letter shall include a sheet of white background, adhesive, Proposition 65 Warning
24 stickers with the following warning in no less than Book Antiqua, point 9 font (or its equivalent):

25 **WARNING:** this product contains a chemical known
26 to the State of California to cause birth
27 defects or other reproductive harm

28 The Notification Letter shall require written confirmation from the recipient, within fifteen (15)

1 days of mailing, as to the number of Covered Product in their inventory and confirmation that all
2 such inventory has been labelled with the warning language identified in this section or, if it is not
3 possible to complete either such action within fifteen (15) days, a date by which such action shall be
4 completed. OGGI shall diligently pursue such written response from Beverages & More,
5 Inc./BevMo! and Bed Bath & Beyond, Inc. and shall take all reasonable efforts to ensure that
6 Beverages & More, Inc./BevMo! and Bed Bath & Beyond, Inc. do not sell any Covered Product in
7 California after the Effective Date without a clear and reasonable warning as described herein.

8 **3.2.2** OGGI shall maintain records of compliance correspondence, inventory reports or
9 other communication confirming compliance with § 3.2.1 for three (3) years from the Effective Date
10 and shall produce copies of such records upon written request by Davia subject to the same terms
11 listed in section 3.1.2 governing when Davia may request information.

12 **3.3 OGGI Warning Obligations**

13 As of the Effective Date, and until October 31, 2016, OGGI shall not sell or ship any Covered
14 Product to a California retailer, or sell or ship any Covered Product to a vendor or retailer that
15 OGGI reasonably understands maintains retail outlets in California, unless such Covered Product is
16 sold or shipped with one of the clear and reasonable warnings set forth hereafter. Each warning
17 shall be prominently placed with such conspicuousness as compared with other words, statements,
18 designs, or devices as to render it likely to be read and understood by an ordinary individual under
19 customary conditions *before* purchase or use. Each warning shall be provided in a manner such that
20 the consumer or user understands to which *specific* Covered Product the warning applies, so as to
21 minimize the risk of consumer confusion. Such warning obligations are not applicable to any Lead
22 Free Covered Product.

23 (a) **Retail Store Sales.** For all Covered Products sold at to any entity that OGGI
24 reasonably understands maintains retail outlets in California, OGGI shall affix a warning to the
25 labeling or directly on the Covered Product that states:

26 **WARNING:** This product contains a chemical known
27 to the State of California to cause birth
28 defects or other reproductive harm.

1 (b) **Catalog and Internet Listings.** OGGI represents that the Covered Products
2 sold by OGGI are listed in catalogs and on the internet, but are not available for sale via mail order
3 or the Internet. Any such catalog or Internet site listing any Covered Product shall include a
4 warning, identifying the specific Covered Product to which the warning applies, as specified in
5 Sections 3.2(b)(i) and (ii) below.

6 (i) **Catalog Warning.** When providing product catalogs which list
7 Covered Products that are not lead free, after the Effective Date, to a vendor or retailer that OGGI
8 reasonably understands maintains retail outlets in California, OGGI agrees to provide a warning
9 within the catalog. The warning will be in the same type size or larger than the Covered Product
10 description text within the catalog. The following warning shall be provided on the same page as
11 the display and/or description of the Covered Product:

12 **WARNING:** This product contains a chemical known
13 to the State of California to cause birth
14 defects or other reproductive harm.

15 Where it is impracticable to provide the warning on the same page as the display and/or
16 description of the Covered Product, OGGI may utilize a designated symbol to cross reference the
17 applicable warning and shall define the term “designated symbol” with the following language on
18 the inside of the front or back cover of the catalog or on the same page as any order form for the
19 Covered Product(s):

20 **WARNING:** Certain products identified with this
21 symbol ▼ contains a chemical known to
22 the State of California to cause birth
23 defects or other reproductive harm.

24 The designated symbol must appear on the same page and in close proximity to the display
25 and/or description of the Covered Product. On each page where the designated symbol appears,
26 OGGI must provide a header or footer directing the consumer to the warning language and
27 definition of the designated symbol.

28 If OGGI elects to provide warnings in any catalog, then the warnings must be included in all
catalogs offering to sell one or more Covered Products printed after the Effective Date.

1 (ii) **Internet Website Warning.** OGGI agrees to provide a warning on its
2 website in conjunction with the listing or display of any Covered Products. The following warning
3 statement shall be used and shall appear adjacent to or immediately following the display of the
4 Covered Product for which it is given in the same type size or larger than the Covered Product
5 description text:

6 **WARNING:** This product contains a chemical known
7 to the State of California to cause birth
8 defects or other reproductive harm.
9 Alternatively, the designated symbol may appear adjacent to or immediately following the display,
10 description, or price of the Covered Product for which a warning is being given, provided that the
11 following warning statement also appears elsewhere on the same web page, as follows:

12 **WARNING:** Products identified on this page with the
13 following symbol ▼ contain Lead, a chemical
14 known to the State of California to cause birth
15 defects or other reproductive harm.

16 **3.4 Elimination of OGGI's Warning Option**

17 After October 31, 2016, OGGI shall not distribute or otherwise sell any Covered Product
18 unless it is Lead Free and shall not sell any Covered Product that is not Lead Free regardless of
19 whether a Proposition 65 warning accompanies the product.

20 **4. MONETARY PAYMENTS**

21 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

22 As a condition of settlement of all the claims referred to in this Consent to Judgment, OGGI
23 shall pay a total of \$18,000.00 in civil penalties in accordance with California Health & Safety Code
24 § 25249.12(c)(1) & (d).

25 **4.2 Augmentation of Penalty Payments**

26 For purposes of the penalty assessment under this Agreement, plaintiff is relying entirely upon
27 defendant and its counsel for accurate, good faith reporting to plaintiff of the nature and amounts
28 of relevant sales activity. If within nine (9) months of the Effective Date, plaintiff discovers and
presents to Settling Defendant evidence that any type of Covered Product has been distributed by

1 Settling Defendant in sales volumes materially different than those identified by such Settling
2 Defendant prior to execution of this Agreement, then such misrepresenting Settling Defendant shall
3 be liable for an additional penalty amount of up to \$10,000 for Covered Product sold prior to
4 execution of this Agreement but not identified by such defendant to plaintiff. Settling Defendant
5 shall also be liable for any reasonable, additional attorney fees expended by plaintiff in discovering
6 applicable additional retailers or sales for such defendant, up to a maximum of \$10,000. Plaintiff
7 agrees to provide such misrepresenting Settling Defendant with a written demand for all such
8 additional penalties and attorney fees under this Section. After service of such demand, such
9 defendant shall have thirty (30) days to agree to the amount of fees and penalties owing and submit
10 such payment to plaintiff in accordance with the method of payment of penalties and fees identified
11 in Sections 4.4 and 4.5. Should this thirty (30) day period pass without any such resolution between
12 the parties and payment of such additional penalties and fees, plaintiff shall be entitled to file a
13 formal legal claim for civil penalties pursuant to this section and shall be entitled to all reasonable
14 attorney fees and costs relating to such claim. All civil penalties paid pursuant to this section shall
15 be paid to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2016-00219") and "Susan
16 Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2016-00219"), in accordance with
17 California Health & Safety Code § 25249.12(c)(1) & (d), by the date agreed upon by the parties or
18 ordered by the Court. All attorney fees paid pursuant to this section shall be paid to the "Sheffer
19 Law Firm" (EIN 55-08-58910, Memo line "2016-00219") by the date agreed upon by the parties or
20 ordered by the Court. All penalties and fees paid pursuant to this section shall be delivered to the
21 Sheffer Law Firm at the following address:

22 Sheffer Law Firm
23 Attn: Proposition 65 Controller
24 81 Throckmorton Ave., Suite 202
25 Mill Valley, CA 94941

26 **4.3 Reimbursement of Plaintiff's Fees and Costs**

27 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
28 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee

1 issue to be resolved after the material terms of the agreement had been settled. Settling Defendant
2 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
3 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
4 Davia and her counsel under general contract principles and the private attorney general doctrine
5 codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter,
6 except fees that may be incurred on appeal. Under these legal principles, OGGI shall pay the
7 amount of \$37,000.00 for fees and costs incurred investigating, litigating and enforcing this matter,
8 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining
9 the Court's approval of this Agreement in the public interest.

10 **4.4 Payment Timing**

11 OGGI shall deliver all settlement payment funds required by this Agreement to its counsel
12 within one week of the date that this Agreement is fully executed by the Parties. OGGI's counsel
13 shall confirm receipt of settlement funds in writing to plaintiff's counsel and, thereafter, hold the
14 amounts paid in trust until such time as the Court approves this settlement contemplated by
15 Section 7.

16 Within two business days of the date plaintiff provides notice to counsel for OGGI that the
17 Court has approved this settlement, OGGI's counsel shall deliver the settlement payments to
18 plaintiff's counsel as follows:

- 19 1. a civil penalty check in the amount of \$13,500.00 payable to "OEHHA" (EIN: 68-
20 0284486, Memo line "Prop 65 Penalties, 2016-00219");
- 21 2. a civil penalty check in the amount of \$4,500.00 payable to "Susan Davia" (Tax ID to
22 be supplied, Memo line "Prop 65 Penalties, 2016-00219"); and
- 23 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the
24 amount of \$37,000.00 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2016-
25 00219")

26 All penalty and fee/cost payments shall be delivered to the Sheffer Law Firm at the following
27 address:
28

1 Sheffer Law Firm
2 Attn: Proposition 65 Controller
3 81 Throckmorton Ave., Suite 202
4 Mill Valley, CA 94941

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

8 **5. CLAIMS COVERED AND RELEASE**

9 **5.1 Davia's Releases of Settling Defendant**

10 **5.1.1** This Agreement is a full, final, and binding resolution between Davia, on behalf of
11 herself, her past and current agents, representatives, attorneys, successors, and/or assignees, and in
12 the interest of the general public, and OGGI and BevMo and each of their attorneys, successors,
13 affiliates, licensors and assigns ("Defendant Releasees") of any violation of Proposition 65 that has
14 been or could have been asserted against Defendant Releasees regarding the failure to warn about
15 exposure to any Listed Chemical arising in connection with any Covered Product manufactured,
16 sourced, distributed, or sold by Defendant Releasees prior to the Effective Date. Settling
17 Defendant's compliance with this Agreement shall constitute compliance with Proposition 65 with
18 respect to the Listed Chemical in the Covered Products after the Effective Date.

19 **5.1.2** Davia, on behalf of herself, her past and current agents, representatives, attorneys,
20 successors, and/or assignees, and in the interest of the general public, hereby waives and releases,
21 to the maximum extent allowed by law, Defendant Releasees from all claims for violation of
22 Proposition 65 through the Effective Date based upon exposures from Covered Products to the
23 Listed Chemical as set forth in plaintiff's March 22, 2016, 60-Day Notice to OGGI.

24 The Parties further understand and agree that this Section 5.1 release shall not extend
25 upstream to any entities that manufactured any Covered Product or any component parts thereof,
26 or any distributors or suppliers who sold any Covered Products or any component parts thereof to
27 Settling Defendant.

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1 **5.2** Settling Defendants' Release of Davia

2 **5.2.1** Settling Defendants waive any and all claims against Davia, her attorneys, and other
3 representatives for any and all actions taken or statements made (or those that could have been
4 taken or made) by Davia and her attorneys and other representatives, whether in the course of
5 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
6 and/or with respect to the Covered Products.

7 **5.3** General Release - Each Party also provides, for the benefit of the other party and
8 Defendant Releasees, a general release herein which shall be effective as a full and final accord and
9 satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,
10 damages, losses, claims, liabilities and demands of any Party of any nature, character or kind,
11 known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Each
12 Party acknowledges that it is familiar with Section 1542 of the California Civil Code, which
13 provides as follows:

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

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

24 **6.** COURT APPROVAL

25 This Agreement is effective upon execution but must also be approved by the Court. If the
26 Court does not approve this Agreement in its entirety, the Parties shall meet and confer to
27 determine whether to modify the terms of the Agreement and to resubmit it for approval. In
28

1 meeting and conferring, the Parties agree to undertake any actions reasonably necessary to amend
2 and/or modify this Agreement in order to further the mutual intention of the Parties in entering
3 into this Agreement. The Agreement shall become null and void if, for any reason, it is not
4 approved and entered by the Court, as it is executed, within one year after it has been fully
5 executed by all Parties.

6
7 **7. SEVERABILITY**

8 If, subsequent to court approval of this Agreement, any of the provisions of this Agreement
9 is determined by a court to be unenforceable, the validity of the enforceable provisions remaining
10 shall not be adversely affected if all parties so agree, unless the Court finds that any unenforceable
11 provision is not severable from the remainder of the Agreement.

12 **8. GOVERNING LAW**

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

14 **9. NOTICES**

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

17 For OGGI Corporation:

18 Aji Das, President
19 OGGI Corporation
20 1809 ½ Orangethorpe Park
Anaheim, CA 92801

21 With copy to their counsel at:

22 Craig J. Lervick
23 Larkin Hoffman
24 8300 Norman Center Drive, Suite 1000
Minneapolis, MN 55437-1060

25 For Davia to:

26 Proposition 65 Coordinator
27 Sheffer Law Firm
28 81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941

1 Any Party may modify the person and address to whom the notice is to be sent by sending each
2 other 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
5 Health & Safety Code §25249.7(f).

6 **11. MODIFICATION**

7 This Agreement may be modified only: (1) by written agreement of the Parties; or (2)
8 upon a successful motion of any party and approval of a modified Agreement by the Court.

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
12 approval, Davia and Settling Defendant, and their respective counsel, agree to mutually employ
13 their best efforts to support the entry of this Agreement as a settlement agreement and obtain
14 approval of the Agreement - sufficient to render an order approving this agreement - by the Court
15 in a timely manner. Any effort by Settling Defendant to impede judicial approval of this
16 Agreement shall subject such impeding party to liability for attorney fees and costs incurred by
17 plaintiff or her counsel in their efforts to meet or oppose such Settling Defendant's impeding
18 conduct.

19 **13. ENTIRE AGREEMENT**

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

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
4 attorney fees and costs incurred as a result of such motion, order or application, if allowed under
5 C.C.P. §1021.5. Should a Settling Defendant prevail on any motion, application for order to show
6 cause or other proceeding to enforce a violation of this Consent Judgment, a Settling Defendant
7 may be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order
8 or application upon a finding that Davia’s prosecution of the motion or application lacked
9 substantial justification. For purposes of this Agreement, the term substantial justification shall
10 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016,
11 et seq.

12 **14.2** Except as specifically provided in the above paragraph and in Section 4.3, each Party
13 shall bear its own costs and attorney’s fees in connection with this action.

14 **14.3** Nothing in this Section 14 shall preclude a Party from seeking an award of sanctions
15 pursuant to law.

16 **15. NEUTRAL CONSTRUCTION**

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

26 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

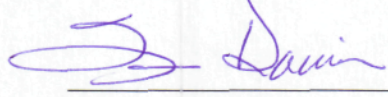
27 This Agreement may be executed in counterparts and by facsimile or portable document
28 format (PDF), each of which shall be deemed an original, and all of which, when taken together,

1 shall constitute one and the same document.

2 **17. AUTHORIZATION**

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

6 **IT IS SO AGREED**

<p>7</p> <p>8 Dated: August <u>24</u>, 2016</p> <p>9 </p> <p>10 _____ Plaintiff Susan Davia</p>	<p>8 Dated: August __, 2016</p> <p>9 _____</p> <p>10 Aji Das, President OGGI Corporation</p>
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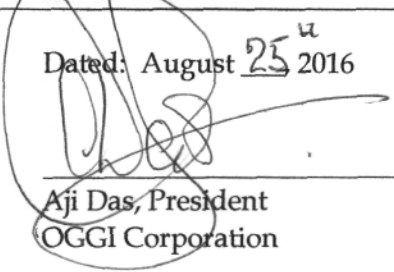
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