

1 Gregory M. Sheffer, Esq., 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 RUBIE'S COSTUME COMPANY, INC., and
15 DOES 1-150,

16 Defendants.
17
18
19
20
21
22
23
24
25
26
27
28

Case No. CIV 1604382

**PROPOSITION 65 CONSENT TO
JUDGMENT SETTLEMENT
AGREEMENT**

Action Filed: December 7, 2016
Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This consent to judgment settlement agreement (“Consent Judgment” or “Agreement”) is
4 entered into by and between Susan Davia (“Davia”), and the entities that execute this Consent
5 Judgment, including Rubie’s Costume Company, Inc. (“Rubie’s”). All settling defendants shall be
6 referred to herein as a “Settling Defendant” and collectively as “Settling Defendants.” Settling
7 Defendants and Davia are the “Parties” to this Agreement. To participate in this settlement, all
8 Settling Defendants must execute this Consent Judgment by February 28, 2016, or such later date
9 as permitted by Davia as reasonably necessary to let additional Settling Defendants who express
10 interest in participating by February 28, 2016, participate in the settlement.

11 **1.2 Plaintiff Susan Davia**

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

15 **1.3 Settling Defendants**

16 Davia alleges that Settling Defendants are persons in the course of doing business for
17 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
18 Safety Code §§ 25249.6 *et seq.* (“Proposition 65”). For purposes of this Consent Judgment only,
19 Settling Defendants do not dispute that they qualify as such persons in the course of doing
20 business.

21 **1.4 General Allegations**

22 Davia alleges that Settling Defendants participated in the manufacture (or other
23 acquisition), distribution and/or sale, in the State of California, of vinyl/PVC packaging and
24 storage cases for costume and/or costume accessories, which packaging or storage cases exposed
25 users to di(2-ethylhexyl)phthalate (DEHP), and/or other listed phthalates without first providing
26 a “clear and reasonable warning” under Proposition 65. DEHP and certain other phthalates are
27 listed as carcinogens and/or reproductive and developmental toxins pursuant to Proposition 65.
28 DEHP, and other listed phthalates, shall hereinafter, where applicable, be referred to as the

1 “Listed Chemical” or “Listed Chemicals” as the case may be. Plaintiff does not contend that any
2 products packaged inside the Covered Packaging sold by Settling Defendants contain any listed
3 phthalates or other Listed Chemicals in alleged violation of Proposition 65.

4 **1.5 Notices of Violation**

5 Commencing on February 1, 2016, Davia served Settling Defendants and various public
6 enforcement agencies with a document entitled “60-Day Notice of Violation” that provided public
7 enforcers and the noticed entities with notice of alleged violations of Health & Safety Code §
8 25249.6 for failing to warn consumers of the presence of DEHP, and/or other listed phthalates,
9 found in Covered Packaging sold in California. Each Settling Defendant received a 60-Day Notice
10 of Violation (the “Notice” or “Notices”).

11 Each Settling Defendant and Davia represent that, as of the date each executes this Consent
12 Judgment, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65
13 enforcement action related to DEHP and/or other listed phthalates in the Covered Packaging as
14 identified in that Settling Defendant’s 60-Day Notice. A Settling Defendant may execute this
15 Agreement prior to expiration of the 60-day notice period for any Proposition 65 60-day Notice
16 served upon it. While the execution of this Agreement by Settling Defendant is binding as of the
17 date of execution, and may not be voluntarily withdrawn, this Agreement shall become null and
18 void as to such Settling Defendant in the event that an authorized California public enforcer
19 assumes prosecution of Davia’s Noticed claims on or before the expiration of the 60-day notice
20 period pertaining to such Settling Defendant. Otherwise, immediately upon expiration of the 60-
21 day notice period as to any Settling Defendant who has executed this Agreement, the obligations
22 of this Agreement become binding and the Release of Settling Defendant and designated releasees
23 shall become effective after all Section 4.1 and Section 4.3 monetary payments have been made by
24 such Settling Defendant pursuant to the procedures outlined in Section 4.4

25 **1.6 Complaint**

26 On December 7, 2016, Plaintiff filed a complaint in the Superior Court of California for the
27 County of Marin, Case No. CIV 1604382, alleging violations by Rubie’s and DOE defendants of
28 Health & Safety Code § 25249.6 based, *inter alia*, on the alleged exposure to DEHP, DINP, DIDP or

1 other listed phthalates contained in Covered Packaging (hereinafter “Action” or “Complaint”). As
2 part of, and upon execution of, this Agreement, the Settling Defendants stipulate and agree that
3 the Complaint shall and will be amended to include all recitals and allegations against Settling
4 Defendants of Davia’s claims relating to the listed phthalates in Covered Packaging as identified
5 in Davia’s Notices to each such Settling Defendant. The Parties agree that this stipulated First
6 Amended Complaint (“FAC”) shall be presented for approval to the Court as part of and in
7 conjunction with the motion to approve this Consent Judgment. Each Settling Defendant
8 stipulates and agrees to waive service of the FAC except as part of the anticipated motion to
9 approve this Consent Judgment and approve the FAC. With the exception of any Settling
10 Defendant’s right to respond to the FAC as detailed in Section 6.4 of this Agreement, each Settling
11 Defendant further stipulates to waive any response to the FAC and stipulates that the FAC shall
12 be deemed at issue as to Settling Defendant upon approval of the FAC. Notwithstanding this
13 Stipulation, each Settling Defendant shall be responsible for paying the statutory first appearance
14 fees, whether on the day of any approval hearing for this Consent Judgment or at such earlier time
15 as any responsive pleading is filed.

16 **1.7 No Admission**

17 This Agreement resolves claims that are denied and disputed by Settling Defendants. The
18 Parties enter into this Agreement pursuant to a full and final settlement of any and all claims
19 between the Parties for the purpose of avoiding prolonged litigation. Settling Defendants each
20 deny the material factual and legal allegations contained in the Notices, the Complaint, and the
21 FAC, and expressly maintain that they did not knowingly or intentionally expose California
22 consumers to any listed chemicals through the reasonably foreseeable use of the Covered
23 Packaging, and otherwise contend that all Covered Packaging and products that each has
24 manufactured, distributed and/or sold in California have been and are in compliance with all
25 applicable laws, and are completely safe for their intended use. Nothing in this Consent
26 Judgment shall be construed as an admission by Settling Defendants of any fact, finding, issue of
27 law, or violation of law, nor shall compliance with this Consent Judgment constitute or be
28 construed as an admission by the Settling Defendants of any fact, finding, conclusion, issue of law,

1 or violation of law, such being specifically denied by Settling Defendants. Notwithstanding the
2 foregoing, this section shall not diminish or otherwise affect Settling Defendants' obligations,
3 responsibilities, and duties under this Consent Judgment.

4 **1.8 Consent to Jurisdiction**

5 For purposes of this Consent Judgment only, the Parties stipulate that the Marin County
6 Superior Court has jurisdiction over Settling Defendants as to the allegations in the Notices,
7 Complaint and FAC, and that venue is proper in the County of Marin. As an express part of this
8 Consent Judgment, pursuant to Code of Civil Procedure Section 664.6, the Marin County Superior
9 Court shall retain jurisdiction over the Parties to enforce this Agreement until performance in full
10 of the terms of the settlement.

11 **2. DEFINITIONS**

12 **2.1** The term "Packaging" or "Covered Packaging" shall mean all costume and
13 costume accessory packaging and storage cases made in whole or in part with vinyl/PVC that are
14 or will be sold in California, including, but not limited to, the products identified in the Notice to
15 each Settling Defendant.

16 **2.2** The term "Phthalate Free" Covered Packaging shall mean that each accessible
17 component of any Covered Packaging contains less than or equal to 1,000 parts per million
18 ("ppm") each of DEHP, DBP, DINP, DIDP, DnHP and BBP as determined by a minimum of
19 duplicate quality controlled test results using Environmental Protection Agency ("EPA") testing
20 methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies
21 for purposes of determining DEHP or other listed phthalate content in a solid substance. Davia
22 agrees that Covered Packaging meeting this reformulation standard complies with Proposition 65
23 for DEHP, DBP, DINP, DIDP, DnHP and BBP.

24 **2.3** "Effective Date" shall mean February 28, 2017.

25 **3. INJUNCTIVE RELIEF**

26 **3.1 Covered Packaging Reformulation Commitment**

27 **3.1.1** No later than the Effective Date or the date of first Covered Packaging order
28 thereafter, Settling Defendants shall provide the Phthalate Free concentration standards of Section

1 2.2 to the manufacturer or vendors of any Covered Packaging and the vinyl/PVC components
2 thereof and instruct each such entity not to incorporate any raw or component materials that do
3 not meet the Phthalate Free concentration standards of Section 2.2 into any such Covered
4 Packaging. Settling Defendants shall maintain copies of all vendor correspondence relating to the
5 Covered Packaging Phthalate Free concentration standard for two years after the Effective Date,
6 and shall produce such copies to Davia within fifteen (15) days of receipt of Davia's reasonable
7 written request.

8 **3.1.2** After the Effective Date, Settling Defendants shall provide the Phthalate Free
9 concentration standards of Section 2.2 to any new manufacturer or vendor of the Covered
10 Packaging, and any vinyl/PVC component thereof, and instruct such manufacturer or vendor not
11 to incorporate any raw or component materials that do not meet the Phthalate Free concentration
12 standards of Section 2.2 into any such Covered Packaging. Prior to the purchase or acquisition of
13 any Covered Packaging from such new manufacturer or vendor, Settling Defendants shall obtain
14 a written confirmation and accompanying laboratory test result from the new manufacturer or
15 vendor demonstrating the Covered Packaging's compliance with the Phthalate Free concentration
16 standard. For every Covered Packaging Settling Defendants manufacture, cause to be
17 manufactured, order, cause to be ordered or otherwise obtain from a new vendor after the
18 Effective Date, Settling Defendants shall maintain copies, for two years after the Effective Date, of
19 all testing of such Covered Packaging demonstrating compliance with this section, and copies of
20 all vendor correspondence relating to the Phthalate Free concentration standard, and shall
21 produce such copies to Davia within fifteen (15) days of receipt of written request from Davia.

22 **3.1.3** No later than the Effective Date, Settling Defendants shall not manufacture or cause
23 to be manufactured, order or cause to be ordered any Covered Packaging that is not Phthalate
24 Free.

25 **3.2 Covered Packaging Labels for Existing Inventory**

26 As of the Effective Date, Settling Defendant shall not sell or ship any Covered Packaging
27 that it reasonably understands is not Phthalate Free to a California vendor or retailer, or to a
28 vendor or retailer that Settling Defendant reasonably understands maintains retail outlets in

1 California, unless such Covered Packaging is sold or shipped with labeling or a sticker containing
2 language directing that the packaging be discarded after opening. If Settling Defendant uses a
3 sticker on any Covered Packaging to communicate the notice required by this section, such sticker
4 shall be no less than 4 square centimeters and shall be comprised of black font letters on a white
5 adhesive label. Each Covered Packaging label or sticker containing this language shall be
6 prominently placed on the Covered Packaging so as to render it likely to be read and understood
7 by an ordinary individual under customary conditions *before* use.

8 **4. MONETARY PAYMENTS**

9 **4.1 Civil Penalty**

10 As a condition of settlement of all the claims referred to in the Notices, the Complaint, the
11 FAC, and this Consent Judgment, Settling Defendants shall each individually pay the amount of
12 civil penalties specified on their individual Exhibit A, attached hereto, in accordance with
13 California Health & Safety Code § 25249.12(c)(1) & (d).

14 **4.2 Augmentation of Penalty Payments**

15 For purposes of the penalty assessment under this Consent Judgment, Davia is relying
16 upon Settling Defendants and their counsel for accurate, good faith reporting to Davia of the
17 nature and amounts of relevant sales activity and/or annual revenue providing a reasonable basis
18 on which to estimate such sales activity. If within nine (9) months of the Effective Date, Davia
19 discovers and presents to a Settling Defendant evidence that its annual revenues materially
20 exceeded the amount set forth on its Exhibit A, the Parties shall have a period of 30 days to meet
21 and confer concerning such evidence, and Settling Defendant shall have the opportunity to
22 present to Plaintiff any evidence to the contrary. If the Parties can agree on an appropriate
23 disposition, then Settling Defendant shall submit payment of any agreed additional civil penalties
24 and attorney's fees related to plaintiff's investigation of such defendant's annual revenues and/or
25 sales activity within 30 days in accordance with the method of payment of penalties and fees
26 specified in Sections 4.1, 4.3 and 4.4. Plaintiff shall submit an application to the Court for approval
27 of any agreed civil penalty payment or attorney fee/cost reimbursement payment that exceeds
28 \$12,000. If the Parties cannot agree on an appropriate disposition within 30 days, Davia shall be

1 entitled to file a motion against the applicable Settling Defendant for additional civil penalties
2 pursuant to this section. The prevailing party on any such motion shall be entitled to its
3 reasonable fees and costs incurred in prosecuting or defending such motion.

4 **4.3 Reimbursement of Davia’s Fees and Costs**

5 The Parties acknowledge that Davia and her counsel offered to resolve this dispute
6 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
7 this fee issue to be resolved after the material terms of the agreement had been settled. Settling
8 Defendants determined that negotiation of the fee and cost reimbursement would be more
9 effectively done as part of the settlement and without further litigation or application to the Court.

10 The Parties then attempted to (and did) reach an accord on the compensation due to Davia and
11 her counsel under general contract principles and the private attorney general doctrine codified at
12 California Code of Civil Procedure section 1021.5, for all work performed in this matter, except
13 fees that may be incurred on appeal. Under these legal principles, Settling Defendants shall pay
14 Davia’s counsel the amount specified on their respective Exhibit A for fees and costs incurred
15 investigating, litigating and enforcing this matter.

16 **4.4 Payment Procedures**

17 Each Settling Defendant shall pay the Section 4.1 civil penalty amount specified in their
18 respective Exhibit A by a civil penalty check representing 75% of the total civil penalty payable to
19 “OEHHA” (Memo line “Prop 65 Penalties”) and a civil penalty check representing 25% of the total
20 civil penalty payable to “Susan Davia” (Memo line “Prop 65 Penalties”).

21 Each Settling Defendant shall pay the Section 4.3 attorney fee and cost amount specified in
22 their respective Exhibit A by a check payable to “Sheffer Law Firm”.

23 All Section 4.1 and 4.3 civil penalty and attorney fee/cost payments shall be delivered to
24 Settling Defendant’s counsel, or designated coordinating counsel, within ten days of the date that
25 this Agreement is executed by such Settling Defendant. Each Settling Defendant’s counsel, or
26 designated coordinating counsel, shall confirm receipt of settlement checks in writing to Plaintiff’s
27 counsel and, thereafter, hold the checks in trust until such time as the Court approves the
28 settlement as to such Settling Defendant. Within five business days of the date Davia or her

1 counsel provide electronic mail notice to Settling Defendant's counsel, or designated coordinating
2 counsel, that the Court has approved the Consent Judgment as to that Settling Defendant, such
3 counsel shall deliver the civil penalty and attorney fee/cost settlement checks it has held in trust
4 to Plaintiff's counsel as follows:

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

9 All Section 4.2 civil penalty and attorney fee/cost payments (if any) shall be delivered to
10 plaintiff's counsel at the following address on or before the date agreed upon pursuant to that
11 section:

12 Sheffer Law Firm
13 Attn: Proposition 65 Controller
14 81 Throckmorton Ave., Suite 202
15 Mill Valley, CA 94941

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

19 **4.5 Issuance of 1099 Forms**

20 After this Agreement has been executed and the settlement funds have been transmitted to
21 Davia's counsel, each Settling Defendant shall issue three separate 1099 forms, as follows, for its
22 settlement payments specified in its Exhibit A:

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

26 (b) The second 1099 shall be issued to Davia in the amount paid pursuant to
27 Sections 4.1 and 4.2 (if any), whose address and tax identification number shall be
28 furnished upon request; and

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

1 **4.6** Delayed or Non-Payment of Civil Penalties or Attorney Fees

2 While the obligations of this Consent Judgment are binding upon execution, the Release of
3 Settling Defendants shall not become effective as to a Settling Defendant until after all of that
4 Settling Defendant's Section 4.1 and 4.3 monetary payments have been made and all such funds
5 have cleared. Each Settling Defendant is only responsible for its own settlement payments and
6 bears no joint and several liability for the settlement payments of any other Settling Defendant.

7 **5.** RELEASES

8 **5.1** Davia's Release of Settling Defendants

9 **5.1.1** This Consent Judgment is a full, final and binding resolution between Davia, on
10 behalf of herself and in the public interest, and Settling Defendants, of all violations of Proposition
11 65 asserted by Davia on behalf of herself and her representatives and attorneys, against Settling
12 Defendants, their parent companies, directors, officers, employees, attorneys, affiliates with more
13 than 50% common ownership as identified on Settling Defendant's Exhibit A, and each entity to
14 whom Settling Defendants directly or indirectly distribute or sell products in Covered Packaging,
15 including, but not limited to, retailers, downstream distributors, wholesalers, customers,
16 franchisees, cooperative members, and licensees (collectively "Releasees"), based on their failure
17 to warn about alleged exposures to Listed Chemicals contained in Covered Packaging
18 manufactured, distributed, sold and/or offered for sale by Settling Defendants in California before
19 the Effective Date as detailed in the Notice sent to each Settling Defendant and alleged against
20 each such Settling Defendant in this Action.

21 **5.1.2** In further consideration of the promises and agreements herein contained, Davia,
22 on behalf of herself and her past and current representatives and attorneys, hereby waives all
23 Davia's rights to institute or participate in, directly or indirectly, any form of legal action, and
24 releases all claims that Davia may have against the Releasees, including, without limitation, all
25 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
26 costs, fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert
27 fees, and attorneys' fees, but exclusive of fees and costs on appeal -- arising under Proposition 65
28 with respect to Listed Chemicals in Covered Packaging manufactured, distributed, sold and/or

1 offered for sale by Settling Defendants before the Effective Date as detailed in the Notice sent to
2 each Settling Defendant and alleged against each such Settling Defendant in this Action
3 (collectively “claims”).

4 **5.1.3** Davia also, in her individual capacity, on behalf of herself and her past and current
5 representatives and attorneys, provides a general release herein, which shall be effective as a full
6 and final accord and satisfaction, and operate as a bar to all actions, causes of action, obligations,
7 costs, expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of Davia, of any
8 nature, character or kind, known or unknown, suspected or unsuspected, arising out of Covered
9 Packaging manufactured, distributed or sold by Settling Defendants or Releasees prior to the
10 Effective Date. Davia acknowledges that she is familiar with Section 1542 of the California Civil
11 Code, which provides as follows:

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

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

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

5.2 Settling Defendants’ Release of Davia

1 Settling Defendants, each on behalf of themselves, their past and current agents,
2 representatives, attorneys, successors, and/or assignees, hereby waive any and all claims against
3 Davia and her attorneys and other representatives, for any and all actions taken or statements
4 made (or those that could have been taken or made) by Davia and her attorneys and other
5 representatives, whether in the course of investigating claims, otherwise seeking to enforce
6 Proposition 65 against them in this matter, or with respect to Covered Packaging. Each Settling
7 Defendant acknowledges that it is familiar with Section 1542 of the California Civil Code, which
8 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
11 FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN
12 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
13 SETTLEMENT WITH THE DEBTOR.

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

21 6. POST SETTLEMENT ACTIVITIES AND COURT APPROVAL

22 **6.1** The Parties acknowledge that, pursuant to California Health & Safety Code §
23 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which
24 Plaintiff shall prepare and file. As part of the noticed motion, plaintiff will seek approval of those
25 fees and costs to be paid pursuant to this Consent Judgment, representing a portion of the total
26 fees and costs incurred by Davia's counsel with respect to the investigation, litigation and
27 enforcement of this mater, including the fees and costs previously incurred in this Action that
28 have not otherwise been recovered. In furtherance of obtaining such approval, the Parties and
their respective counsel agree to mutually employ their best efforts to support the entry of this
Agreement as a Consent Judgment and obtain approval of the Consent Judgment by the Court in

1 a timely manner. For purposes of this section, best efforts shall include, at a minimum,
2 cooperating on the drafting and filing of any papers in support of the required motion for judicial
3 approval. The Parties further agree to accept service of notice of entry of any order on Plaintiff's
4 motion to approve the settlement and/or enter judgment by electronic mail delivery to Settling
5 Defendant's counsel of record or other electronic mail recipient expressly designated for purposes
6 of this section in Settling Defendant's Exhibit A.

7 **6.2** If this Consent Judgment is not approved by the Court in its entirety, the Parties
8 shall meet and confer to determine whether to modify the terms of the Consent Judgment and to
9 resubmit it for approval. In meeting and conferring, the Parties agree to undertake any actions
10 reasonably necessary to amend and/or modify this Consent Judgment in order to further the
11 mutual intention of the Parties in entering into this Consent Judgment.

12 **6.3** If this Consent Judgment is not entered by the Court within one year of the
13 Effective Date, it shall be of no force or effect and shall never be introduced into evidence or
14 otherwise used in any proceeding for any purpose other than to determine the rights or
15 obligations of a Party as a result of the fact that the Consent Judgment was not approved.

16 **6.4** If this Consent Judgment is not entered by the Court, and the Parties have
17 exhausted their meet and confer efforts pursuant to Section 6.2, upon 15 days written notice, the
18 law firm holding a Settling Defendant's funds or settlement checks in trust shall refund any and
19 all payments or settlement checks held in trust for that Settling Defendant as requested. If this
20 consent judgment is not approved by the court, each Settling Defendant retains the right to
21 respond, or amend any previous response, to the FAC in this action in any manner permitted
22 under the Code of Civil Procedure to the extent the FAC is or has been filed against any such
23 defendant.

24 7. SEVERABILITY

25 If any of the provisions of this Consent Judgment are found by a court to be unenforceable,
26 the validity of the enforceable provisions remaining shall not be adversely affected, unless the
27 Court finds that any unenforceable provision is not severable from the remainder of the
28 Agreement.

1 **8. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of
3 California. In the event that Proposition 65 is repealed, or is otherwise rendered inapplicable, by
4 reason of law generally, or as to the Covered Packaging, then Settling Defendants may, upon
5 proper written notice to Davia of any asserted change in the law, make a motion in the Marin
6 County Superior Court to be relieved from further obligations pursuant to this Consent Judgment
7 with respect to, and to the extent that, Covered Packaging is so affected.

8 **9. NOTICES**

9 When any Party is entitled to receive any notice under this Consent Judgment, the notice
10 shall be sent by certified mail or electronically tracked express delivery (e.g., Fedex, US Postal,
11 UPS, etc.) for no more than two-day delivery to the persons identified on their respective Exhibit
12 A. Any Party may modify the person and address to whom the notice is to be sent by sending
13 each other Party notice by certified mail and/or other verifiable form of written communication.

14 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

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

17 **11. MODIFICATION**

18 This Consent Judgment may be modified only by written agreement of the Parties or court
19 order after agreement of the affected Parties.

20 **12. ENTIRE AGREEMENT**

21 This Consent Judgment contains the sole and entire agreement and understanding of the
22 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
23 negotiations, commitments, and understandings related hereto. No representations, oral or
24 otherwise, express or implied, other than those contained herein have been made by any Party
25 hereto with respect to the subject matter hereof. No other agreements not specifically referred to
26 herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties with respect to the
27 subject matter hereof. No supplementation, modification, waiver, or termination of this
28 subject matter hereof. No supplementation, modification, waiver, or termination of this

1 Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of
2 any of the provisions of this Consent Judgment shall be deemed to or shall constitute a waiver of
3 any other provision, whether or not similar, nor shall such waiver constitute a continuing waiver.

4 **13. ATTORNEY'S FEES**

5 **13.1** Should Davia prevail on any motion, application for order to show cause or
6 other proceeding to enforce a violation of this Consent Judgment, Davia shall be entitled to her
7 reasonable attorney's fees and costs incurred as a result of such motion, order or application,
8 consistent with C.C.P. § 1021.5. Should any Settling Defendant prevail on any motion, application
9 for order to show cause or other proceeding to enforce a violation of this Agreement, that Settling
10 Defendant shall be entitled to its reasonable attorney's fees and costs incurred as a result of such
11 motion, order or application upon a finding that Davia's prosecution of the motion or application
12 lacked substantial justification. For purposes of this Consent Judgment, the term substantial
13 justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil
14 Procedure §§ 2016, *et seq.*

15 **13.2** Except as otherwise specifically provided herein, each Party shall bear its own
16 costs and attorney's fees in connection with the Notices, the Complaint, the FAC, and this Consent
17 Judgment.

18 **13.3** Nothing in this Section shall preclude a Party from seeking an award of
19 sanctions pursuant to law.

20 **14. NEUTRAL CONSTRUCTION**

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

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

waive California Civil Code Section 1654.

15. COUNTERPARTS, FACSIMILE SIGNATURES

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

16. AUTHORIZATION

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

IT IS SO AGREED



<p>Dated: May <u>18</u>, 2017</p>  <p>Name: Kevin W. Mahoney Title: Vice President & General Counsel Spencer Gifts LLC</p>	<p>Dated: May <u>31</u>, 2017</p>  <p>Susan Davia</p>
---	---

EXHIBIT A - SPENCER GIFTS LLC

CONSENT JUDGMENT CIV 1604382

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

I. Name and Service Address of Settling Defendant:

Steven Silverstein, CEO
Spencer Gifts LLC
6826 Black Horse Pike
Egg Harbor Township, NJ 08234

II. Names of Defendant Releasees and Downstream Defendant Releasees include but are not limited to the following:

Spencer Spirit Holdings, Inc.
Spirit Halloween Superstores LLC

III. Covered Products: Vinyl/PVC packaging for costumes and costume accessories.

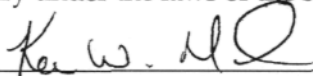
IV. Settlement Payments:

\$7,000 in Civil Penalties
\$14,500 in Attorney's Fees and Costs.

V. Verification


Settling Defendant hereby executes the Consent Judgment, subscribes to all rights and obligations under the Consent Judgment and certifies the accuracy of the information provided in this Exhibit A under penalty of perjury under the laws of the State of California.

Dated: May 18, 2017


Kevin Mahoney, Vice President & General Counsel
Spencer Gifts LLC

VI. Acceptance

Dated: May 19, 2017


Susan Davia