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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 JODHPURI, INC., PAPER SOURCE, INC.  
and DOES 1-150,

15 Defendants.  
16

Case No. CIV 1602264

**SETTLEMENT AGREEMENT AND  
CONSENT TO JUDGMENT AS TO  
DEFENDANTS JODHPURI, INC. AND  
PAPER SOURCE, INC.**

Action Filed: June 24, 2016  
Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This settlement agreement and consent to judgment (“Agreement” or “Settlement  
4 Agreement”) is entered into by and between plaintiff Susan Davia, (“Davia”) and defendants  
5 Jodhpuri, Inc. (“Jodhpuri”) and Paper Source, Inc. (“Paper Source”)(collectively “Settling  
6 Defendants”) with Davia, Jodhpuri and Paper Source collectively referred to as the “Parties.”

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 Jodhpuri and Paper Source**

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

15 **1.4 General Allegations**

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

21 **1.5 Notice of Violation**

22 On March 22, 2016, Davia served Jodhpuri, Paper Source 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 found in Covered Products sold in  
26 California. Jodhpuri and Paper Source both received the March 22, 2016, 60-Day Notice of  
27 Violation.  
28

1 The Parties represent that, as of the date each executes this Agreement, it is not aware of any  
2 public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to Lead in  
3 the Covered Products, as identified in the 60-Day Notice.

4 **1.6 Complaint**

5 On June 24, 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 1602264, alleging violations by Jodhpuri, Paper Source and Does 1-150 of Health & Safety Code §  
8 25249.6 based, *inter alia*, on the alleged exposures to Lead contained in certain copper drinkware  
9 with brass handles (hereafter “Complaint” or “Action”).

10 **1.7 No Admission**

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

25 **1.8 Consent to Jurisdiction**

26 The Parties stipulate that, pursuant to C.C.P. Section 664.6, the Marin County Superior  
27 Court has jurisdiction over the Parties as to this Agreement, that venue is proper in County of  
28

1 Marin, and that the Marin County Superior Court has jurisdiction to enforce the provisions of this  
2 Agreement.

3 **2. DEFINITIONS**

4 **2.1** The term “Products” or “Covered Products” shall mean all copper mugs with  
5 handles or other components made with brass, which mugs are manufactured and/or distributed  
6 by Jodhpuri (including, but not limited to, 16 oz. hammered and regular surface mugs, 16 oz.  
7 colored mugs, 16 oz. hammered and regular surface chalk mugs, 2 and 4 pack mini shot mugs).

8 **2.2** The term “Lead Free” Covered Products shall mean every component of any  
9 Covered Product containing less than or equal to 100 parts per million (“ppm”) of Lead as  
10 determined by a minimum of duplicate quality controlled test results using Environmental  
11 Protection Agency (“EPA”) testing methodologies 3050B and 6010B, or equivalent methodologies  
12 utilized by Federal or State agencies for the purpose of determining Lead content in a solid  
13 substance.

14 **2.3** “Effective Date” shall mean November 15, 2016.

15 **3. INJUNCTIVE RELIEF**

16 **3.1 Products No Longer in Jodhpuri’ Control**

17 As a material term of this Agreement, Jodhpuri represents that, shortly after receiving  
18 Davia’s Notice, it contacted certain California retail customers of Covered Products, including  
19 Paper Source, to advise them of the potential problem with the Listed Chemical in a component of  
20 the Covered Products. No later than the July 1, 2017, Jodhpuri shall send a letter, electronic or  
21 otherwise (“Notification Letter”) to (1) its primary sales contact at Paper Source, Inc., (2) each  
22 California customer and/or retailer to which Jodhpuri, after January 1, 2016, supplied any Covered  
23 Products and (3) any California customer and/or retailer that Jodhpuri reasonably understands or  
24 believes had any inventory for resale in California of Covered Products as of July 1, 2016. The  
25 Notification Letter shall advise the recipient that the Covered Products “contain Lead, a chemical  
26 known to the State of California to birth defects or other reproductive harm,” and request that the  
27 recipient either (a) label the Covered Products remaining in inventory for sale in California, or to  
28

1 California Customers, with a label that is complaint with Section 3.3(a) or (b) return, at Jodhpuri's  
2 sole expense, all units of the Covered Product to Jodhpuri. The Notification Letter shall require a  
3 response from the recipient within 15 days, confirming whether the Covered Products will be  
4 labeled or returned. Jodhpuri shall maintain records of all correspondence or other  
5 communications generated pursuant to this Section for two years after the Effective Date and shall  
6 promptly produce copies of such records upon Davia's written request.

7 **3.2 Product Reformulation Commitment**

8 **3.2.1** On or before the Effective Date, Jodhpuri shall provide the Lead Free concentration  
9 standards of Section 2.2 to any manufacturer or vendor of any Covered Product and the brass  
10 components thereof and instruct each such entity not to incorporate any raw or component  
11 materials that do not meet the Lead Free concentration standards of Section 2.2 into any Covered  
12 Product. Prior to any such future manufacture of any Covered Product, Jodhpuri shall obtain a  
13 written confirmation and accompanying laboratory test result from the manufacturer or vendor of  
14 any raw material comprising the brass component of the Covered Product demonstrating  
15 compliance with the Lead Free concentration standard for each such material. Prior to purchase or  
16 other acquisition of any Covered Product from any manufacturer or vendor, Jodhpuri shall obtain a  
17 written confirmation and accompanying laboratory test result from the new vendor demonstrating  
18 compliance with the Lead Free concentration standard in all materials comprising the Covered  
19 Product and a post-production sample of Covered Product. For every Covered Product Jodhpuri  
20 manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from a  
21 vendor after the Effective Date, Jodhpuri shall maintain copies of all testing of such products  
22 demonstrating compliance with this section, shall maintain copies of all vendor correspondence  
23 relating to the Lead Free concentration standards and shall produce such copies to Davia within  
24 fifteen (15) days of receipt of written request from Davia.

25 **3.2.2** As of the Effective Date, Jodhpuri shall only manufacture or cause to be  
26 manufactured, order or cause to be ordered, and distribute or cause to be distributed Lead Free  
27 Covered Products.

1           **3.3 Product Warnings for Existing Jodhpuri Inventory**

2           As of the Effective Date, for all inventory of Covered Products manufactured or ordered by  
3 Jodhpuri before the Effective Date, Jodhpuri shall not sell or ship any such Covered Product to a  
4 California customer or retailer, or sell or ship any Covered Product to a customer or retailer that  
5 Jodhpuri reasonably understands maintains retail outlets in the California, unless such Covered  
6 Products are sold or shipped with one of the clear and reasonable warnings set forth hereafter.

7           Each warning shall be prominently placed with such conspicuousness as compared with  
8 other words, statements, designs, or devices as to render it likely to be read and understood by an  
9 ordinary individual under customary conditions *before* purchase or use. Each warning shall be  
10 provided in a manner such that the consumer or user understands to which *specific* Covered  
11 Product the warning applies, so as to minimize the risk of consumer confusion.

12           (a)     **Product Labeling.** For all Covered Products sold to any entity that Jodhpuri  
13 reasonably understands either maintains retail outlets in California or is a distributor for any entity  
14 that maintains retail outlets in the California, Jodhpuri shall affix a warning to the labeling of the  
15 Covered Product that states:

16                     **WARNING:** This product contains Lead, a chemical known to  
17                     the State of California to cause birth defects or  
18                     other reproductive harm. Please wash hands after  
                          handling.

19           (b)     **Catalog and Internet Sales.** For all Covered Products sold or offered for sale  
20 by Jodhpuri via catalog or the Internet to customers located in the United States any such catalog or  
21 Internet site offering any Covered Product for sale shall include a warning in the catalog or within  
22 the website, identifying the specific Covered Product to which the warning applies, as specified in  
23 Sections 3.2(b)(i) and (ii) below.

24           (i)     **Mail Order Catalog Warning.** Any warning provided in a mail order  
25 catalog must be in the same type size or larger than the Covered Product description text within the  
26 catalog. The following warning shall be provided on the same page and in the same location as the  
27 display and/or description of the Covered Product:

28

1                   **WARNING:** This product contains Lead, a chemical known to  
2                   the State of California to cause birth defects or  
3                   other reproductive harm. Please wash hands after  
4                   handling.

5                   Where it is impracticable to provide the warning on the same page and in the same location  
6                   as the display and/or description of the Covered Product, Jodhpuri may utilize a designated  
7                   symbol to cross reference the applicable warning and shall define the term “designated symbol”  
8                   with the following language on the inside of the front or back cover of the catalog or on the same  
9                   page as any order form for the Old Covered Product(s):

10                   **WARNING:** Certain products identified with this symbol ▼  
11                   contain Lead, a chemical known to the State of  
12                   California to cause birth defects or other  
13                   reproductive harm. Please wash hands after  
14                   handling.

15                   The designated symbol must appear on the same page and in close proximity to the display  
16                   and/or description of the Covered Product. On each page where the designated symbol appears,  
17                   Jodhpuri must provide a header or footer directing the consumer to the warning language and  
18                   definition of the designated symbol.

19                   If Jodhpuri elects to provide warnings in any mail order catalog, then the warnings must be  
20                   included in all catalogs offering to sell one or more Covered Products printed after the Effective  
21                   Date.

22                   (ii)       **Internet Website Warning.** A warning must be given in conjunction  
23                   with the sale, or offer of sale, of any Covered Products by Jodhpuri via the Internet, provided it  
24                   appears either: (a) on the same web page on which a Covered Product is displayed; (b) on the same  
25                   web page as the order form for a Covered Product; (c) on the same page as the price for any  
26                   Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout  
27                   process. The following warning statement shall be used and shall appear in any of the above  
28                   instances adjacent to or immediately following the display, description, or price of the Covered  
29                   Product for which it is given in the same type size or larger than the Covered Product description  
30                   text:

1                   **WARNING:** This product contains Lead, a chemical known to  
2                   the State of California to cause birth defects or  
3                   other reproductive harm. Please wash hands after  
4                   handling.

4                   Alternatively, the designated symbol may appear adjacent to or immediately following the  
5                   display, description, or price of the Covered Product for which a warning is being given, provided  
6                   that the following warning statement also appears elsewhere on the same web page, as follows:

7                   **WARNING:** Products identified on this page with the following  
8                   symbol ▼ contain Lead, a chemical known to the  
9                   State of California to cause birth defects or other  
10                  reproductive harm. Please wash hands after  
11                  handling.

11                  After December 31, 2016, Jodhpuri shall not distribute or otherwise sell any Covered  
12                  Product to a California customer or retailer, or sell or ship any Covered Product to a customer or  
13                  retailer that Jodhpuri reasonably understands maintains retail outlets in California unless it is Lead  
14                  Free and shall not sell any Covered Product that is not Lead Free to a California customer or  
15                  retailer, or sell or ship any Covered Product that is not Lead Free to a customer or retailer that  
16                  Jodhpuri reasonably understands maintains retail outlets in California regardless of whether a  
17                  Proposition 65 warning accompanies the product.

18  
19                  **4.        MONETARY PAYMENTS**

20                  **4.1        Civil Penalty**

21                  As a condition of settlement of all the claims referred to in this Agreement, Jodhpuri shall  
22                  pay a total of \$14,000 in civil penalties in accordance with California Health & Safety Code §  
23                  25249.12(c)(1) & (d).

24                  **4.2        Augmentation of Penalty Payments**

25                  For purposes of the penalty assessment under this Agreement, Davia is relying entirely  
26                  upon Jodhpuri and its counsel for accurate, good faith reporting to Davia of the nature and  
27                  amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers  
28                  and presents to Jodhpuri evidence that the Covered Products have been distributed by Jodhpuri in



1 sales volumes materially different than those identified by Jodhpuri prior to execution of this  
2 Agreement, then Jodhpuri shall be liable for an additional penalty amount of \$10,000.00. Jodhpuri  
3 shall also be liable for any reasonable, additional attorney fees, up to \$10,000 or an amount ordered  
4 by the Court, expended by Davia in discovering such additional retailers or sales. Davia agrees to  
5 provide Jodhpuri with a written demand for all such additional penalties and attorney fees under  
6 this Section. After service of such demand, Jodhpuri shall have thirty (30) days to agree to the  
7 amount of fees and penalties owing by Jodhpuri and submit such payment to Davia in accordance  
8 with the method of payment of penalties and fees identified in Section 4.1 and 4.4. Should this  
9 thirty (30) day period pass without any such resolution between the parties and payment of such  
10 additional penalties and fees, Davia shall be entitled to file a formal legal claim for additional  
11 penalties pursuant to this Section and shall be entitled to all reasonable attorney fees and costs  
12 relating to such claim.

#### 13 **4.3 Reimbursement of Davia’s Fees and Costs**

14 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without  
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
16 issue to be resolved after the material terms of the agreement had been settled. Jodhpuri then  
17 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been  
18 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
19 Davia and her counsel under general contract principles and the private attorney general doctrine  
20 codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter,  
21 except fees that may be incurred on appeal. Under these legal principles, Jodhpuri shall pay  
22 Davia’s counsel the amount of \$45,000 for fees and costs incurred investigating, litigating and  
23 enforcing this matter, including the fees and costs incurred (and yet to be incurred) negotiating,  
24 drafting, and obtaining the Court’s approval of this Agreement in the public interest.

#### 25 **4.4 Payment Procedures**

26 Within seven (7) days of the date the Superior Court approves the settlement, Jodhpuri shall  
27 deliver settlement payments to plaintiff’s counsel as follows:

- 28 1. A civil penalty check payable to “OEIHA” (Memo line “Prop. 65 Penalties, 2016-

- 1           00216”), in the amount of \$10,500;
- 2           2. a civil penalty check payable to “Susan Davia” (Memo line “Prop. 65 Penalties, 2016-
- 3           00216”) in the amount of \$3,500; and
- 4           3. a check payable to “Sheffer Law Firm” (Memo line “Prop. 65 Penalties, 2016-00216”) in
- 5           the amount of \$21,000.

6           Within forty-five (45) days of the date the Superior Court approves the settlement, Jodhpuri

7 shall deliver settlement payments to plaintiff’s counsel as follows:

- 8           4. a check payable to “Sheffer Law Firm” (Memo line “Prop. 65 Penalties, 2016-00216”) in
- 9           the amount of \$24,000.

10 All Section 4.1 and Section 4.3 payments shall be delivered to the Sheffer Law Firm at the following

11 address:

12                               Sheffer Law Firm

13                               Attn: Proposition 65 Controller

14                               81 Throckmorton Ave., Suite 202

                                  Mill Valley, CA 94941

15 Jodhpuri shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due

16 and owing from it under this Section that are not received by Sheffer Law Firm within two business

17 days of the due date for such payment.

18           Jodhpuri shall also pay any civil penalties pursuant to Section 4.2, on or before the date

19 agreed upon by the Parties pursuant to Section 4.2 or ordered by the Court, with civil penalty

20 checks payable to “OEHHA” and “Davia” (Memo line “Prop 65 Penalties, 2016-00216”), in the

21 amount agreed by the parties or as ordered by the Court.

22           Jodhpuri shall also pay attorney fees and costs pursuant to Section 4.2, on or before the date

23 agreed upon by the Parties pursuant to Section 4.2, with by a check payable to “Sheffer Law Firm”

24 (Memo line “2016-00216”) in the amount agreed upon by the Parties pursuant to Section 4.2 or as

25 ordered by the Court.

26           All Section 4.2 payments shall be delivered to plaintiff’s counsel at the following address on

27 or before the date agreed upon by the Parties pursuant to Section 4.2:

28

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

5 Jodhpuri shall also be liable for payment of interest, at a rate of 10% simple interest, for all  
6 amounts due and owing from it under Section 4.2 that are not received by Sheffer Law Firm within  
7 two business days of the due date for such payment.

8 **4.5 Issuance of 1099 Forms**

9 After this Agreement has been executed and settlement funds have been transmitted to  
10 Davia's counsel, Jodhpuri shall issue three separate 1099 forms, as follows:

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

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

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

19 **5. CLAIMS COVERED AND RELEASED**

20 **5.1 Davia's Release of Jodhpuri**

21 5.1.1 In consideration of the promises and agreements herein contained, Davia, on  
22 behalf of herself, releases Jodhpuri and each entity to which Jodhpuri directly or indirectly  
23 distributed or sold Covered Products, including, but not limited, to downstream distributors,  
24 customers and retailers ("Releasees"), from all alleged violations of Proposition 65 arising out of the  
25 manufacture, distribution, sale and/or offer for sale of Covered Products by Jodhpuri or Releasees  
26 in California before the Effective Date.

27 5.1.2 In consideration of the promises and agreements herein contained, Davia, acting  
28 on her own behalf and in the public interest, also releases Jodhpuri and Paper Source from all  
claims for violations of Proposition 65 with respect to the Listed Chemical in the Covered Products

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

3 5.1.3 Davia, on her own behalf, also provides a general release herein which shall be  
4 effective as a full and final accord and satisfaction, as a bar to all claims, actions and causes of  
5 action, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out  
6 of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by  
7 Jodhpuri or Releasees prior to the Effective Date. Davia acknowledges that she is familiar with  
8 section 1542 of the California civil 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  
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 Davia expressly waives and relinquishes any and all rights and benefits that she may have  
15 under, or which may be conferred on her 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,  
17 to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released  
18 matters. In furtherance of such intention, excepting Section 4.2, the release hereby given shall be  
19 and remain in effect as a full and complete release notwithstanding the discovery or existence of  
20 any such additional or different claims or facts arising out of the released matters.

21 The Parties further understand and agree that this Section 5.1 release shall not extend  
22 upstream to any entities, other than Jodhpuri, that manufactured the Covered Products or any  
23 component parts thereof, or any distributors or suppliers who sold the Covered Products or any  
24 component parts thereof to Jodhpuri.

25 It is expressly understood and agreed by the Parties that any obligations created by or set  
26 forth in this Agreement shall not be released.

## 27 **5.2 Jodhpuri's Release of Davia**

28 The Release by Davia is mutual. Jodhpuri, each on behalf of itself, its past and current  
agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims

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

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

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

## 18 **6. SEVERABILITY**

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

## 23 **7. COURT APPROVAL**

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

1 into this Agreement.

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

7 **8. GOVERNING LAW**

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

9 **9. NOTICES**

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

12 For Jodhpuri. Inc., to:

13 Laxmi C. Mehta  
14 Jodhpuri Inc.  
15 260A Walsh Drive  
16 Parsippany, NJ 07054

17 With a copy to their counsel:

18 Terry Anastassiou, Esq.  
19 Ropers, Majeski, Kohn & Bentley PC  
20 1001 Marshall Street, Suite 500  
21 Redwood City CA 94063-2052  
22 [terry.anastassiou@rmkb.com](mailto:terry.anastassiou@rmkb.com)

23 For Davia to:

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

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

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

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

4 **11. MODIFICATION**

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

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

8 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion  
9 is required to obtain judicial approval of this Agreement. In furtherance of obtaining such  
10 approval, Davia and Jodhpuri, and their respective counsel, agree to mutually employ their best  
11 efforts to support the entry of this Agreement as a settlement agreement and obtain approval of the  
12 Agreement - sufficient to render an order approving this agreement - by the Court in a timely  
13 manner. Any effort by Jodhpuri to impede judicial approval of this Agreement shall subject such  
14 impeding party to liability for attorney fees and costs incurred by plaintiff or her counsel in their  
15 efforts to meet or oppose such impeding conduct. Settling Defendants agree to accept service of  
16 any Notice of Entry of the order approving this settlement and entering judgment by electronic  
17 mail service to their counsel of record address as identified in Section 9.

18 **13. ENTIRE AGREEMENT**

19 This Agreement contains the sole and entire agreement and understanding of the Parties  
20 with 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  
25 shall be binding unless executed in writing by the Party to be bound. No waiver of any of the  
26 provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other  
27 provisions whether 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  
4 attorney fees and costs incurred as a result of such motion, order or application, consistent with  
5 C.C.P. § 1021.5. Should Jodhpuri prevail on any motion, application for order to show cause or  
6 other proceeding to enforce a violation of this Agreement, Jodhpuri may be entitled to its  
7 reasonable attorney fees and costs incurred as a result of such motion, order or application upon a  
8 finding that Davia's prosecution of the motion or application lacked substantial justification. For  
9 purposes of this Agreement , the term substantial justification shall carry the same meaning as used  
10 in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

11 **14.2** Except as otherwise specifically provided herein, each Party shall bear its own  
12 costs and attorney's fees in connection with the Notice.

13 **14.3** Nothing in this Section shall preclude a Party from seeking an award of sanctions  
14 pursuant to law.

15 **15. NEUTRAL CONSTRUCTION**

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

25 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

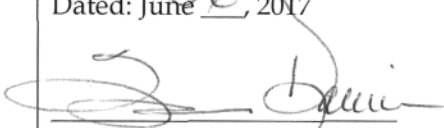
26 This Agreement may be executed in counterparts and by facsimile or portable document format  
27 (PDF), each of which shall be deemed an original, and all of which, when taken together, shall  
28 constitute one and the same document.



1 **17. AUTHORIZATION**

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

5 **IT IS SO AGREED**


<p>6 Dated: June __, 2017</p> <p>7</p> <p>8</p> <p>9 _____ Laxmi C. Mehta, Jodhpuri Inc.</p>	<p>Dated: June <sup>26</sup>__, 2017</p> <p></p> <p>Susan Davia</p>
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4 this Agreement.

5 IT IS SO AGREED

6 Dated: June <u>26</u> , 2017 7 8  9 Laxmi C. Mehta, Jodhpuri Inc.	Dated: June __, 2017  _____ Susan Davia
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