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7  
8 Attorneys for Plaintiff  
9 SUSAN DAVIA

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

13 SUSAN DAVIA,

14 Plaintiff,

15 vs.

16 FORMATION BRANDS, LLC and DOES 1-  
17 150,

18 Defendants.

Case No. CIV \_\_\_\_\_

**SETTLEMENT AGREEMENT AND  
STIPULATION TO JUDGMENT**

Case Filed: June 1, 2016

Trial Date: None Assigned

1       **1.**     INTRODUCTION

2               **1.1**     The Parties

3               This Stipulation to Judgment Settlement Agreement (“Agreement”) is entered into by and  
4 between Plaintiff Susan Davia, (“Davia” or “Plaintiff”) and Defendant Formation Brands, LLC  
5 (“Formation”), with Formation referred to as “Settling Defendant” and Davia and Formation each  
6 referred to as a “Party” and collectively referred to as the “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**     Defendant

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

16              **1.4**     General Allegations

17              Davia alleges that Formation manufactured, distributed and/or sold, in the State of  
18 California, certain mugs known as “Moscow Mule” mugs with brass handles comprised of or made  
19 with made with components that exposed users to Lead without first providing a “clear and  
20 reasonable warning” as Proposition 65 defines that phrase. Lead is listed as a reproductive and  
21 developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed  
22 Chemical” or “Lead.”

23              **1.5**     Notice of Violation

24              On March 22, 2016, Davia represents she served Formation and Beverages & More, Inc. and  
25 BevMo Holdings, LLC (collectively “BevMo”) with a valid and compliant Proposition 65 60-  
26 DayNotice of Violation, including a valid, requisite Certificate of Merit, that provided public  
27 enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6 for  
28 failing to warn consumers of exposure to Lead in brass-handled copper and colored “Moscow Mule”

1 mug products sold in California (the "Notice").

2 Formation received the Notice. The Parties represent that, as of the date they execute this  
3 Agreement, they believe that no public enforcer is diligently prosecuting a Proposition 65  
4 enforcement action related to the Listed Chemical in the products identified in the Notice.

5 **1.6 Complaint**

6 On June 1, 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 \_\_\_\_\_ alleging violations by Formation and Does 1-150 of Health & Safety Code § 25249.6 based,  
9 *inter alia*, on the alleged consumer exposures to Lead contained in the Covered Products (defined  
10 below).

11 **1.7 No Admission**

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

25 **1.8 Consent to Jurisdiction**

26 For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction over  
27 Formation as to the allegations contained in the Complaint, that venue is proper in County of Marin,  
28 and that this Court has jurisdiction to enter and enforce the provisions of this Agreement. As an

1 express part of this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was filed  
2 shall retain jurisdiction over the parties to enforce the Agreement.

3 **2. DEFINITIONS**

4 **2.1** The term “Complaint” shall mean the June 1, 2016, Complaint.

5 **2.2** The term “Covered Product 1” means any Formation brand copper or other beverage  
6 “Moscow Mule” mug product with brass handles including, but not limited to, 16 oz. copper and  
7 colored Moscow Mule mugs, such as those contained in the “Set of Two” packaging identified in the  
8 Notice. The term “Covered Product 2” shall mean any additional type of beverage “Moscow Mule”  
9 mug product with brass handles, except for Covered Product 1. Collectively, Covered Product 1 and  
10 Covered Product 2 are the “Covered Products.”

11 **2.3** The term “Effective Date” shall mean the date on which Davia serves notice, via email  
12 on counsel for Formation, of a Court Order approving this Agreement.

13 **2.4** The term “Lead Free” shall mean Covered Products containing materials or  
14 components that may be handled, touched or mouthed by a consumer, and which materials or  
15 components each yield less than 100 parts per million (“ppm”) Lead when such surface material is  
16 analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies  
17 utilized by Federal or State agencies for the purpose of determining Lead content in a solid substance.

18 **2.5** “Manufactured” and “manufactures” have the meaning defined in Section 3(a)(10) of  
19 the Consumer Product Safety Act (“CPSA”) [15 U.S.C. § 2052(a)(10)], as amended from time to time.

20 **3. NON-MONETARY RELIEF**

21 **3.1 Formulation Commitment**

22 Formation represents that the Covered Products distributed in California were a limited time,  
23 exclusive arrangement with BevMo and that they only caused to be manufactured a very limited  
24 amount of such Covered Products. After December 31, 2016 if Formation manufactures, causes to  
25 be manufactured on its behalf, distributes or causes to be distributed on its behalf, or sells any  
26 Covered Product in California, all such products shall be Lead Free. After December 31, 2016,  
27 Formation shall no longer retain the option to manufacture, distribute or sell Covered Products in  
28 California with a warning.

1           **3.1.1** At any time after the Effective Date that Formation contracts with an existing or new  
2 vendor of Covered Product 1 or Covered Product 2, Formation shall provide such vendor with the  
3 Lead Free concentration standards of Section 2.4 and instruct its vendors not to incorporate any raw  
4 or component materials into such Covered Products, especially brass materials, that do not meet the  
5 Lead Free concentration standards of Section 2.4.

6           **3.1.2** To the extent Covered Product 1 and Covered Product 2 are subject to Section 3.1.1  
7 above, Formation shall maintain copies of all testing of such products it conducts or obtains  
8 demonstrating compliance with this Section 3, shall maintain copies of material vendor  
9 correspondence relating to the Lead Free standards and shall produce such copies to Davia within  
10 fifteen (15) days of receipt of written request from Davia. Davia shall not be entitled to request this  
11 information more than once in 2016 and once annually thereafter, absent good cause shown.  
12 Formation shall retain the Section 3.1.1 and 3.1.2 records for three (3) years after the dates thereof.

13           **3.2** Previously Obtained or Distributed Covered Products - BevMo Notification.

14           No later than May 20, 2016, Formation shall send a letter, electronic or otherwise  
15 (“Notification Letter”) to its primary customer contact at BevMo. The Notification Letter shall advise  
16 BevMo that Formation has reviewed test results demonstrating that Covered Product 1 contains  
17 Lead, a chemical known to the State of California to cause birth defects and other reproductive harm.  
18 The Notification letter shall direct BevMo to either (a) remove all inventory of Covered Product 1  
19 from California BevMo stores and terminate further retail sale of Covered Product 1 in California or  
20 (b) label all Covered Product 1 with a clear and reasonable Proposition 65 warning before such  
21 product is sold in the California stores. The Notification Letter shall include a minimum of one sheet  
22 of white background, adhesive, Proposition 65 Warning stickers with the following warning in no  
23 less than Book Antiqua, point 9 font (or its equivalent):

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

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

1 of mailing, as to the number of Covered Product 1 in their inventory and confirmation that all such  
2 inventory either is no longer available for retail sale or has been labeled with the warning language  
3 identified in this section or, if it is not possible to complete either such action within fifteen (15) days,  
4 a date by which either such action will be completed. Formation shall diligently pursue such written  
5 response from BevMo and shall take all reasonable efforts to ensure that BevMo does not sell any  
6 Covered Product in California in 2016 without a clear and reasonable warning as described herein.  
7 Formation shall maintain records of compliance correspondence, inventory reports or other material  
8 communications confirming compliance with Section 3.2 for three (3) years from the Effective Date  
9 and shall produce copies of such records upon written request by Davia subject to the same terms in  
10 Section 3.1.2 governing when Davia may request information.

11 **3.3** Formation Warning Obligations

12 Formation certifies that, as Covered Product 1 was a limited run and a BevMo exclusive  
13 product, it has no further inventory of Covered Product 1. As of May 20, 2016, and until December  
14 31, 2016, Formation shall not sell or ship any Covered Product to a California vendor or retailer, or  
15 sell or ship any Covered Product to a vendor or retailer that Formation reasonably understands  
16 maintains retail outlets in California, unless such Covered Product is sold or shipped with one of the  
17 clear and reasonable warnings set forth hereafter. Each warning shall be prominently placed with  
18 such conspicuousness as compared with other words, statements, designs, or devices as to render it  
19 likely to be read and understood by an ordinary individual under customary conditions *before* use.  
20 Each warning shall be provided in a manner such that the consumer or user understands to which  
21 *specific* Covered Product the warning applies, so as to minimize the risk of consumer confusion.

22 (a) **Product Labeling.** For all Covered Products sold after May 20, 2016 to any entity that  
23 Formation reasonably understands maintains retail outlets in California, Formation shall affix a  
24 warning to each Covered Product, which may be on the label or packaging of each such product, that  
25 states:

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

1 (b) **Mail Order Catalog and Internet Sales.** Formation represents that, to its knowledge,  
2 no Covered Products are sold by Formation or BevMo via mail order catalog or the Internet to  
3 customers located in California.

4 **4. MONETARY PAYMENTS**

5 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

6 As a condition of settlement of all the claims referred to in this Agreement, Formation Brands,  
7 LLC shall pay a total of \$13,000.00 in civil penalties in accordance with California Health & Safety  
8 Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental  
9 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Davia.

10 **4.2 Augmentation of Penalty Payments**

11 For purposes of the penalty assessment under this Agreement, Plaintiff is relying entirely  
12 upon Defendant for accurate, good faith reporting to Plaintiff of the nature and amounts of relevant  
13 sales activity and retailer BevMo’s compliance with the warning obligations of this Agreement. If  
14 within nine (9) months of the Effective Date, Plaintiff discovers and presents to Defendant either (1)  
15 evidence that any type of Covered Product has been distributed by Defendant in sales volumes  
16 materially different (more than 15%) than those identified by Defendant prior to execution of this  
17 Agreement or (2) that after completion of the actions set forth in Section 3.2, BevMo is selling the  
18 Covered Product in California without a warning pursuant to this Agreement, then Formation shall  
19 be liable for an additional penalty amount of up to \$65.00 for each unit of Covered Product sold in  
20 California prior to execution of this Agreement but not identified by Formation to Plaintiff or for each  
21 unit of Covered Product sold by BevMo in California without a warning after more than five (5) units  
22 are found without the requisite warning. Defendant shall also be liable for any reasonable, additional  
23 attorney fees expended by Plaintiff in discovering applicable California sales without warning.  
24 Plaintiff agrees to provide Defendant with a written demand for all such additional penalties and  
25 attorney fees under this Section. After service of such demand, the Parties shall meet and confer in  
26 good faith to assess the information. If within twenty (20) days Defendant agrees Plaintiff has  
27 documented a violation of this Section, the Parties shall have and additional ten (10) days to agree to  
28 the amount of fees and penalties owing. Thereafter, Defendant shall have five (5) days to submit such

1 payment to Plaintiff in accordance with the method of payment of penalties and fees identified in  
2 Section 4.4. These deadlines may be extended upon mutual agreement of the Parties. Should the  
3 Parties fail to agree on whether a violation exists or the amount of penalties or fees, Plaintiff shall be  
4 entitled to enforce this Agreement and resulting Consent Judgment, seeking such relief as is  
5 authorized by law, and shall be entitled to reasonable attorney fees and costs as set forth in Section  
6 14.

#### 7 **4.3 Reimbursement of Plaintiff's Fees and Costs**

8 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without  
9 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee  
10 issue to be resolved after the material terms of the agreement had been settled. Settling Defendant  
11 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had  
12 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to  
13 Davia and her counsel under general contract principles and the private attorney general doctrine  
14 codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter,  
15 except fees that may be incurred on appeal. Under these legal principles, Formation Brands, LLC  
16 shall pay the amount of \$33,500.00 for fees and costs incurred investigating, litigating and enforcing  
17 this matter, including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and  
18 obtaining the Court's approval of this Agreement in the public interest.

#### 19 **4.4 Payment Timing and Delivery Instructions, Payments Held In Trust**

20 Formation Brands, LLC shall deliver all settlement checks required by this Agreement and  
21 resulting Consent Judgment to its counsel within thirty (30) days of the date that Davia reports this  
22 Agreement to the Office of the Attorney General, and notice of the same is provided to Davia's  
23 counsel via electronic mail. Formation Brands, LLC's counsel shall confirm receipt of settlement  
24 checks in writing to plaintiff's counsel. Within five business days of the Effective Date, counsel for  
25 Formation Brands, LLC shall deliver the settlement checks it has held pursuant to this Section to  
26 Plaintiff's counsel as follows:

- 27 1. a civil penalty check in the amount of \$9,750.00 payable to "OEHHA" (EIN: 68-  
28 0284486, Memo line "Prop 65 Penalties, 2016-00218");



1           2.           a civil penalty check in the amount of \$3,250.00 payable to “Susan Davia” (EIN: to  
2 be supplied upon request by Formation), Memo line “Prop 65 Penalties, 2016-00218”); and

3           3.           An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the amount  
4 of \$33,500.00 payable to “Sheffer Law Firm” (EIN 55-08-58910, Memo line “2016-00218”).

5 All penalty and fee/cost payments shall be delivered to the Sheffer Law Firm at the following  
6 address:

7                   Sheffer Law Firm  
8                   Attn: Proposition 65 Controller  
9                   81 Throckmorton Ave., Suite 202  
10                  Mill Valley, CA 94941.

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

14 **5.           CLAIMS COVERED AND RELEASE**

15           **5.1       Davia’s Releases of Settling Defendant**

16           **5.1.1    This Agreement is a full, final, and binding resolution between Davia, on behalf of**  
17 **herself, her past and current agents, representatives, attorneys, successors, and/or assignees, and in**  
18 **the interest of the general public, and Formation and BevMo and each of their attorneys, predecessors,**  
19 **successors, affiliates, licensors, and assigns, (“Defendant Releasees”), of any violation of Proposition**  
20 **65 that has been or could have been asserted against Defendant Releasees regarding the failure to**  
21 **warn about exposure to the Listed Chemical arising in connection with any Covered Product**  
22 **manufactured, sourced, distributed, or sold by Defendant Releasees prior to the Effective Date.**  
23 **Defendant’s compliance with this Agreement shall constitute compliance with Proposition 65 with**  
24 **respect to the Listed Chemical in the Covered Products on and after the Effective Date.**

25           **5.1.2    Davia, on behalf of herself, her past and current agents, representatives, attorneys,**  
26 **successors, and/or assignees, and in the interest of the general public, hereby waives with respect to**  
27 **Covered Products all rights to institute or participate in, directly or indirectly, any form of legal action**  
28 **and releases all claims, including, without limitation, all actions, and causes of action, in law or in**  
**equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses**

1 (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature  
2 whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against  
3 Defendant Releasees that arise under Proposition 65 or any other statutory or common law claims  
4 that were or could have been asserted in the public interest, as such Claims relate to Defendant  
5 Releasees' alleged failure to warn about exposures to the Listed Chemical contained in any Covered  
6 Products.

7 **5.1.3** The Parties further understand and agree that this Section 5.1 release shall not extend  
8 upstream to any entities that manufactured any Covered Product or any component parts thereof, or  
9 any distributors or suppliers who sold any Covered Products or any component parts thereof to  
10 Defendants.

11 **5.1.4** Upon court approval of the Agreement, the Parties waive their respective rights to a  
12 hearing or trial on the allegations of the Complaint.

13 **5.2** Defendant's Release of Davia

14 **5.2.1** Defendant waives any and all claims against Davia, her attorneys, and other  
15 representatives for any and all actions taken or statements made (or those that could have been taken  
16 or made) by Davia and her attorneys and other representatives, whether in the course of investigating  
17 claims or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with  
18 respect to the Covered Products up through the Effective Date.

19 **5.3** General Release

20 **5.3.1** Each Party also provides, for the benefit of the other Party, a general release herein  
21 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of  
22 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands  
23 of any Party of any nature, character or kind, known or unknown, suspected or unsuspected, arising  
24 out of the subject matter of the Action up through the Effective Date, except as otherwise expressly  
25 identified herein. Each Party Defendant acknowledges that it is familiar with Section 1542 of the  
26 California Civil Code, which provides as follows:

27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES  
28 NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF  
EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE

1 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

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

9 **6. SEVERABILITY**

10 If, subsequent to the Effective Date any provision of this Agreement is determined by a court  
11 to be unenforceable, the validity of the enforceable provisions remaining, upon agreement of the  
12 Parties, shall not be adversely affected, unless the Court finds that any unenforceable provision is not  
13 severable from the remainder of the Agreement.

14 **7. COURT APPROVAL**

15 This Agreement is effective upon execution but must also be approved by the Court. If the  
16 Court does not approve this Agreement in its entirety, the Parties shall meet and confer to determine  
17 whether to modify the terms of the Agreement and to resubmit it for approval. In meeting and  
18 conferring, the Parties agree to undertake any actions reasonably necessary to amend and/or modify  
19 this Agreement in order to further the mutual intention of the Parties in entering into this Agreement.  
20 The Agreement shall become null and void if, for any reason, it is not approved and entered by the  
21 Court, as it is executed, within one year after it has been fully executed by all Parties.

22 **8. GOVERNING LAW**

23 The terms of this Agreement shall be governed by the laws of the State of California. This  
24 Agreement applies only to Covered Products sold in California and shall have no effect on, and does  
25 not govern, any Covered Products that are not manufactured and distributed for sale in California or  
26 sold in California.

27 **9. NOTICES**

28 When any Party is entitled to receive any notice under this Agreement, the notice shall be sent

1 by certified mail or other delivery method with a delivery confirmation/tracking system and  
2 electronic mail to the following:

3 For Formation Brands, LLC:

4 Mark Towery, President  
5 Formation Brands LLC  
6 389 Oyster Point Boulevard, Suite 6  
7 South San Francisco, CA 94080.

7 With copy to their counsel at:

8 Judith Praitis, Esq.  
9 Sidley Austin LLP  
10 555 West Fifth Street  
11 Los Angeles, CA 90013.

11 For Davia to:

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

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

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

18 Davia agrees to comply with the reporting form requirements referenced, in California Health  
19 & Safety Code §25249.7(f) and to file a motion for approval of this Agreement.

20 **11. MODIFICATION**

21 This Agreement may be modified only by (1) a written agreement of the Parties and (2) upon  
22 a successful motion of any party and approval of a modified Agreement by the Court. A copy of any  
23 such motion to modify shall be served on the Office of the Attorney General.

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

25 Pursuant to Health & Safety Code § 25249.7 Davia is obligated to file a noticed motion to  
26 obtain Court approval of this Agreement and Davia agrees to do so. Formation shall not oppose  
27 entry of this Agreement and shall support the Court approval of this Agreement in a timely manner.

1     **13.**     ENTIRE AGREEMENT

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

11    **14.**     ATTORNEY'S FEES

12            **14.1**    Should Davia prevail on any motion, application for order to show cause or other  
13    proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable attorney  
14    fees and costs incurred as a result of such motion, order or application, if allowed under C.C.P. §  
15    1021.5. Should Settling Defendant prevail on any motion, application for order to show cause or  
16    other proceeding to enforce a violation of this Agreement and resulting Consent Judgment, Settling  
17    Defendant may be entitled to its reasonable attorney fees and costs incurred as a result of such motion,  
18    order or application upon a finding that Davia's prosecution of the motion or application lacked  
19    substantial justification. For purposes of this Agreement, the term substantial justification shall carry  
20    the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, et seq.

21            **14.2**    Except as specifically provided in the above paragraph and in Section 4.3, each Party  
22    shall bear its own costs and attorney's fees in connection with this action.

23            **14.3**    Nothing in this Section 14 shall preclude a Party from seeking an award of sanctions  
24    pursuant to law.

25    **15.**     NEUTRAL CONSTRUCTION

26            All Parties and their counsel have participated in the preparation of this Agreement and this  
27    Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and  
28    modification by the Parties and has been accepted and approved as to its final form by all Parties and

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their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.


**16. 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.

**17. AUTHORIZATION**

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

**IT IS SO AGREED**

<p>Dated: May __, 2016</p> <p>_____</p> <p>Plaintiff Susan Davia</p>	<p>Dated: May <u>25</u>, 2016</p> <p></p> <p>Mark Towery, President Formation Brands LLC</p>
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2 interpreted against any Party as a result of the manner of the preparation of this Agreement. Each  
3 Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are  
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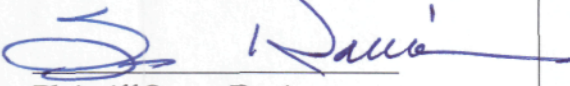
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13 Agreement.

14 **IT IS SO AGREED**

<p>15 Dated: May <u>25</u>, 2016</p> <p>16 </p> <p>17 _____</p> <p>18 Plaintiff Susan Davia</p> <p>19</p> <p>20</p>	<p>21 Dated: May __, 2016</p> <p>22 _____</p> <p>23 Mark Towery, President</p> <p>24 Formation Brands LLC</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>
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