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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 GRENADINE APPAREL, INC., DBA 3  
15 SPROUTS and DOES 1-150,

16 Defendants.  
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Case No. CIV 1604648

**CONSENT TO JUDGMENT AS TO  
DEFENDANT GRENADINE APPAREL, INC.,  
DBA 3 SPROUTS**

Action Filed: December 28, 2016  
Trial Date: None Assigned

1       **1.       INTRODUCTION**

2               **1.1       The Parties**

3               This consent to judgment settlement agreement (“Agreement” or “Settlement Agreement”)  
4 is entered into by and between noticing party Susan Davia, (“Davia”) and notice recipient  
5 Grenadine Apparel, Inc., dba 3 Sprouts (“3 Sprouts” or “Settling Defendant”) with Davia and 3  
6 Sprouts collectively referred to as the “Parties.”

7               **1.2       Davia**

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

11              **1.3       Grenadine Apparel, Inc., dba 3 Sprouts**

12              For the sole purpose of this agreement and the resolution of the subject claims, 3 Sprouts  
13 does not dispute that it is a person in the course of doing business for purposes of the Safe  
14 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et*  
15 *seq.* (“Proposition 65”). 3 Sprouts is alleged to have been responsible for the manufacture and  
16 distribution of the products subject to this Agreement.

17              **1.4       General Allegations**

18              Davia alleges that 3 Sprouts participated in the manufacture, distribution and/or sale, in  
19 the State of California, of PVC product display and storage cases made with materials that  
20 exposed users to DEHP and DINP without first providing “clear and reasonable warning” under  
21 Proposition 65. DEHP is listed as a reproductive toxin and carcinogen pursuant to Proposition 65.  
22 DINP is listed as a carcinogen pursuant to Proposition 65. Both DEHP and DINP shall  
23 collectively be referred to hereinafter as the “Listed Chemical”.

24              **1.5       Notices of Violation**

25              On May 5, 2016, Davia served 3 Sprouts and various public enforcement agencies with a  
26 document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed  
27 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
28

1 consumers of the presence of DINP, a toxic chemical alleged to be found in the Covered Products  
2 sold in California (AG Notice 2016-00412). On October 11, 2016, Davia served 3 Sprouts and  
3 various public enforcement agencies with a document entitled "Supplemental 60-Day Notice of  
4 Violation" that provided public enforcers and the noticed entities with notice of alleged violations  
5 of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP and  
6 DINP, toxic chemicals alleged to be found in the Covered Products sold in California (AG Notice  
7 2016-01173). On December 19, 2016, Davia served 3 Sprouts and various public enforcement  
8 agencies with a document entitled "Supplemental 60-Day Notice of Violation" that provided  
9 public enforcers and the noticed entities with notice of alleged violations of Health & Safety Code  
10 § 25249.6 for failing to warn consumers of the presence of DEHP and DINP, toxic chemicals  
11 alleged to be found in the Covered Products sold in California (AG Notice 2016-01534). The May  
12 5, 2016, 60-Day Notice of Violation, October 11, 2016, Supplemental 60-Day Notice of Violation  
13 and December 19, 2016, Amended Supplemental 60-Day Notice of Violation are hereinafter  
14 collectively referred to as the "Notices."

15 3 Sprouts received the Notices. 3 Sprouts represents that, as of the date it executes this  
16 Agreement, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65  
17 enforcement action related to DEHP or DINP in the Covered Products, as identified in the 60-Day  
18 Notices.

### 19 **1.6 Complaint**

20 On December 28, 2016, Davia, acting in the interest of the general public in California, filed  
21 a Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV  
22 1604648, alleging violations by 3 Sprouts and Does 1-150 of Health & Safety Code § 25249.6 based,  
23 *inter alia*, on the alleged exposures to DEHP and DINP contained in certain vinyl/PVC packaging  
24 and storage case products.

### 25 **1.7 No Admission**

26 This Agreement resolves claims that are denied and disputed by 3 Sprouts. The Parties  
27 enter into this Agreement pursuant to a full, final and binding settlement of any and all claims  
28 between the Parties for the purpose of avoiding prolonged litigation. 3 Sprouts denies the

1 material factual and legal allegations contained in the Notices, maintains that it did not knowingly  
2 or intentionally expose California consumers to DEHP or DINP through the reasonably  
3 foreseeable use of the Covered Products and otherwise contends that, all Covered Products it has  
4 manufactured, distributed and/or sold in California have been and are in compliance with all  
5 applicable laws. Nothing in this Agreement shall be construed as an admission by 3 Sprouts of  
6 any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement  
7 constitute or be construed as an admission by 3 Sprouts of any fact, finding, conclusion, issue of  
8 law, or violation of law, such being specifically denied by 3 Sprouts. However, notwithstanding  
9 the foregoing, this section shall not diminish or otherwise affect 3 Sprouts' obligations,  
10 responsibilities, and duties under this Agreement.

### 11 **1.8 Consent to Jurisdiction**

12 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior  
13 Court has jurisdiction over 3 Sprouts as to the allegations in the 60-Day Notices received from  
14 Davia, and this Agreement, that venue is proper in County of Marin, and that the Marin County  
15 Superior Court has jurisdiction to enforce the provisions of this Agreement. As an express part of  
16 this Agreement, pursuant to Code of Civil Procedure Section 664.6 the Marin County Superior  
17 Court has jurisdiction over the Parties to enforce the settlement until performance in full of the  
18 terms of the settlement.

## 19 **2. DEFINITIONS**

20 **2.1** The term "Product" or "Covered Product" shall mean all 3 Sprouts product  
21 packaging/storage cases made with vinyl/PVC, including those for the cotton canvas and  
22 polyester storage products, including, but not limited to, cotton canvas storage caddy (all designs),  
23 cotton canvas diaper stacker (all designs), cotton knit and terry hooded towel (all designs),  
24 polyester laundry hamper (all designs), cotton canvas storage bin (all designs), polyester canvas  
25 storage box (all designs), toy chest (all designs), stroller organizer (all designs), back seat organizer  
26 (all designs) and wall organizer (all designs).

27 **2.2** The term "Phthalate Free" Covered Products shall mean any component of any  
28 Covered Product containing less than or equal to 1,000 parts per million ("ppm") of di(2-

1 ethylhexyl phthalate) (“DEHP”), dibutyl phthalate (“DBP”), diisononyl phthalate (“DINP”),  
2 diisodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”) and butyl benzyl phthalate (“BBP”)  
3 as determined test results using Environmental Protection Agency (“EPA”) testing methodologies  
4 3580A and 8270C or Consumer Product Safety Commission (“CPSC”) Method CPSC-CH-C1001-  
5 09.3.

6 **2.3** Effective Date” shall mean December 20, 2016.

7 **3. INJUNCTIVE RELIEF**

8 **3.1 Product Reformulation Commitment**

9 **3.1.1** No later than the Effective Date, 3 Sprouts shall provide the Phthalate Free  
10 phthalate concentration standards of Section 2.2 to its then-current vendors of any Covered  
11 Product and instruct such entities not to incorporate any raw or component materials that do not  
12 meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product. 3  
13 Sprouts shall maintain copies of all vendor correspondence relating to the Phthalate Free  
14 concentration standards for two (2) years after the Effective Date and shall produce such copies to  
15 Davia within fifteen (15) days of receipt of reasonable request made in writing from Davia, as long  
16 as such request is made within two (2) years after the Effective Date.

17 **3.1.2** After the Effective Date, 3 Sprouts shall provide the Phthalate Free phthalate  
18 concentration standards of Section 2.2 to any New Vendors of any Covered Product and instruct  
19 such entities not to incorporate any raw or component materials that do not meet the Phthalate  
20 Free concentration standards of Section 2.2 into any Covered Product. “New Vendors” means  
21 vendors of Covered Products from whom 3 Sprouts was not purchasing Covered Products as of  
22 the Effective Date. Prior to purchase and acquisition of any Covered Product from any New  
23 Vendor, 3 Sprouts shall obtain a written confirmation and accompanying laboratory test result  
24 from the New Vendor demonstrating compliance with the Phthalate Free phthalate concentration  
25 standard in all materials comprising the Covered Product. For two (2) years after the Effective  
26 Date, for every Covered Product 3 Sprouts manufactures, causes to be manufactured, orders,  
27 causes to be ordered or otherwise obtains from a New Vendor after the Effective Date, 3 Sprouts  
28 shall maintain copies of all testing of such products demonstrating compliance with this section,

1 shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration  
2 standards and shall produce such copies to Davia within fifteen (15) days of receipt of reasonable  
3 request made in writing from Davia as long as such request is made within two (2) years after the  
4 Effective Date.

5 **3.1.3** As of the Effective Date, 3 Sprouts shall not manufacture or cause to be  
6 manufactured, order or cause to be ordered, distribute or cause to be distributed or otherwise sell  
7 any Covered Product that is not Phthalate Free. For every Covered Product 3 Sprouts  
8 manufactures, causes to be manufactured, orders, causes to be ordered or otherwise sells after the  
9 Effective Date, 3 Sprouts shall maintain copies of all testing of such products demonstrating  
10 compliance with this section, shall maintain copies of all vendor correspondence relating to the  
11 Phthalate Free concentration standards of Section 2.2 and shall produce such copies to Davia  
12 within fifteen (15) days of receipt of reasonable request made in writing from Davia, as long as  
13 such request is made within two (2) years after the Effective Date.

### 14 **3.2 Product Packaging Labels**

15 As of the Effective Date, 3 Sprouts shall not sell or ship any Covered Product that is not  
16 Phthalate Free to a California customer or retailer, or sell or ship any Covered Product that is not  
17 Phthalate Free to a customer or retailer that 3 Sprouts has reason to know maintains retail outlets  
18 in California, unless such Covered Products are shipped with product package label set forth  
19 hereafter.

20 Each such label utilized by 3 Sprouts for any Covered Product shall be prominently placed  
21 either on the front, exterior surface of the clear packaging or where other health and safety  
22 warnings are located, with such conspicuousness as compared with other words, statements,  
23 designs, or devices as to render it likely to be read and understood by an ordinary individual  
24 under customary conditions *before* purchase or use.

#### 25 (a) **Packaging Label.**

26 (i) **Covered Product Labeling.** For all non-Phthalate Free Covered  
27 Product sold into, California, to a California customer or to any entity that 3 Sprouts has reason to  
28 know either maintains retail outlets in California or is a distributor for any entity that maintains

1 retail outlets in California, 3 Sproutsshallaffix a label to the Covered Product that states:

2 **[CALIFORNIA PROP 65] WARNING:** This packaging contains  
3 a chemical [alternatively: “chemicals, including DEHP or DINP”],  
4 known to the State of California to cause cancer and birth defects  
5 or other reproductive harm. *This packaging is not intended as a  
6 storage container. Please discard packaging after purchase.*

7 The bracketed language may, but is not required to, be used.

8 3 Sprouts represents as a material term of this Agreement that it has invested considerable  
9 financial and human resources to reformulate Covered Products to meet the Phthalate Free  
10 concentration standards well in advance of the Effective Date. Such efforts include global  
11 reformulation and the actual replacement of existing packaging with reformulated packaging in  
12 the warehouse as of October 2016. To the extent 3 Sprouts has achieved comprehensive product  
13 reformulation by October 2016, it shall have no labelling obligation under this Section 3.2.

#### 14 **4. MONETARY PAYMENTS**

##### 15 **4.1 Civil Penalty**

16 As a condition of settlement of all the claims referred to in this Consent to Judgment, 3  
17 Sprouts shall cause to be paid a total of \$6,000 in civil penalties in accordance with California  
18 Health & Safety Code § 25249.12(c)(1) & (d).

19 **4.2 Augmentation of Penalty Payments** For purposes of the penalty assessment under  
20 this Agreement, Davia is relying entirely upon 3 Sprouts and its counsel for accurate, good faith  
21 reporting to Davia of the nature and amounts of relevant sales activity. If within nine (9) months  
22 of the Effective Date, Davia discovers and presents to 3 Sprouts evidence that the Covered  
23 Products had been distributed by 3 Sprouts prior to the Effective Date in sales volumes materially  
24 different than those identified by 3 Sprouts prior to execution of this Agreement, then 3 Sprouts  
25 shall be liable for an additional penalty amount of \$10,000.00. 3 Sprouts shall also be liable, in  
26 accordance with the requirements of Code of Civil Procedure section 1021.5 for any reasonable,  
27 additional attorney fees expended by Davia in discovering such additional retailers or sales.  
28 Davia agrees to provide 3 Sprouts with a written demand for all such additional penalties and  
attorney fees under this Section. After service of such demand, 3 Sprouts shall have thirty (30)  
days to agree to the amount of fees and penalties owing by 3 Sprouts and submit such payment to

1 Davia in accordance with the method of payment of penalties and fees identified in Section 4.1  
2 and 4.4. Should this thirty (30) day period pass without any such resolution between the Parties  
3 and payment of such additional penalties and fees, Davia shall be entitled to file a formal legal  
4 claim for damages for breach of this contract and shall be entitled to all reasonable attorney fees  
5 and costs, in accordance with the requirements of Code of Civil Procedure section 1021.5, relating  
6 to such claim.

### 7 **4.3 Reimbursement of Davia'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. 3 Sprouts then  
11 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  
13 to Davia and her counsel under general contract principles and the private attorney general  
14 doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in  
15 this matter, except fees that may be incurred on appeal. Under these legal principles, 3 Sprouts  
16 shall cause to be paid to Davia's counsel the amount of \$48,500 for fees and costs incurred  
17 investigating, litigating and enforcing this matter. Such payment shall be made payable to  
18 "Sheffer Law Firm".

### 19 **4.4 Payment Procedures**

20 3 Sprouts shall deliver all settlement payment checks or funds required by this Consent  
21 Judgment to its counsel within one week of the date that this Agreement is fully executed by the  
22 Parties. Settling Defendant's counsel shall confirm receipt of settlement funds in writing to  
23 plaintiff's counsel and, thereafter, hold the amounts paid in trust until such time as the Court  
24 approves this settlement contemplated by Section 7.

25 Within two days of the date the Court approves the settlement, defendant's counsel shall  
26 deliver the settlement payment checks or funds it has held in trust to plaintiff's counsel as  
27 follows:

- 28 1. a civil penalty check in the amount of \$4,500 payable to "OEHHHA" (EIN: 68-



1 0284486, Memo line "Prop 65 Penalties, 2016-01534");

- 2 2. a civil penalty check in the amount of \$1,500 payable to "Susan Davia" (Tax ID to
- 3 be supplied on request, Memo line "Prop 65 Penalties, 2016-01534"); and
- 4 3. an attorney fee and cost reimbursement check, pursuant to Section 4.3, in the
- 5 amount of \$48,500 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line
- 6 "2016-01534")

7 All Section 4.1 and Section 4.3 penalty and attorney fee/cost payments shall be delivered  
8 to the Sheffer Law Firm at the following address:

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

12 All Section 4.2 civil penalty and attorney fee/cost payments shall be delivered to  
13 plaintiff's counsel at the following address on or before the date agreed upon pursuant to that  
14 section:

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

18 3 Sprouts shall be liable for payment of interest, at a rate of 10% simple interest, for all  
19 amounts due and owing from it under this Section that are not received by Sheffer Law Firm  
20 within five (5) business days of the due date for such payment.

21 The Parties agree that the statutory 60-day notice period for the December 19, 2016, Notice  
22 to 3 Sprouts expires on February 22, 2017. This Agreement shall become null and void if an  
23 appropriate California public entity assumes prosecution of Davia's Noticed claims on or before  
24 February 22, 2017. Otherwise, the obligations of this agreement are binding upon execution, and  
25 the Release of 3 Sprouts and designated Releasees shall become effective after all Section 4.1 and  
26 Section 4.3 monetary payments have been made by 3 Sprouts and all funds have cleared.

#### 27 **4.5 Issuance of 1099 Forms**

28 After this agreement has been executed and the settlement funds have been transmitted to  
Davia's counsel, 3 Sprouts shall cause three separate 1099 forms to be issued, as follows:

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

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

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

9 **5. RELEASES**

10 **5.1 Davia's Release of 3 Sprouts**

11 **5.1.1** This settlement agreement is a full, final and binding resolution between Davia,  
12 acting on her own behalf and in the public interest, and 3 Sprouts of any violation of Proposition  
13 65 asserted by Davia on behalf of herself and in the public interest, her representatives or  
14 attorneys, against 3 Sprouts, its directors, officers, employees and attorneys ("Releasees"), and  
15 each entity to whom 3 Sprouts directly or indirectly distributes or sells Covered Products,  
16 including, but not limited, to retailers (including but not limited to Target Corporation, The  
17 Container Store Group, Inc. and The Container Store Inc.), downstream distributors, wholesalers,  
18 customers, retailers, marketplace hosts, franchisees, cooperative members, and licensees  
19 ("Downstream Releasees"), based on their alleged failure to warn about alleged exposures to  
20 DEHP and DINP contained in the Covered Products that were manufactured, distributed, sold  
21 and/or offered for sale by 3 Sprouts in California before the Effective Date.

22 **5.1.2** 3 Sprouts' compliance with this Settlement Agreement's DEHP and DINP  
23 reformulation requirements shall be deemed compliance with Proposition 65 as to those two  
24 chemicals in the Covered Products. As to Davia only, 3 Sprouts' compliance with the terms of this  
25 Settlement Agreement shall be deemed compliance with Proposition 65 as to exposures to DINP,  
26 DIDP, DEHP, DBP, BBP and DnHP in the Covered Products.

27 **5.1.3** In further consideration of the promises and agreements herein contained, Davia on  
28 behalf of herself, her past and current representatives and attorneys, and in the public interest,

1 hereby waives all Davia's rights to institute or participate in, directly or indirectly, any form of  
2 legal action and releases all claims against Releasees and Downstream Releasees that Davia may  
3 have, including, without limitation, all actions, and causes of action, in law or in equity, suits,  
4 liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including,  
5 but not limited to, investigation fees, expert fees, and attorneys' fees-- limited to and arising under  
6 Proposition 65 with respect to DEHP or DINP in the Covered Products manufactured, distributed,  
7 sold and/or offered for sale by 3 Sprouts before the Effective Date.

8 **5.1.4** Davia also, in her individual capacity, provides a general release herein which shall  
9 be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
10 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of  
11 Davia, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out  
12 of: (a) the subject matter of the Notices as to Covered Products manufactured, distributed or sold  
13 by 3 Sprouts or Releasees before the Effective Date; and (b) DIDP, DBP, BBP or DNHP in the  
14 Covered Products manufactured, distributed, sold and/or offered for sale by Releasees or  
15 Downstream Releasees. Davia acknowledges that she is familiar with section 1542 of the  
16 California civil code, which provides as follows:

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

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

This Section 5.1 release shall not release any obligations created by or set forth in this  
Agreement. The Parties further understand and agree that this Section 5.1 release shall not extend

1 upstream to any entities, other than 3 Sprouts, that manufactured the Covered Products or any  
2 component parts thereof, or any distributors or suppliers who sold the Covered Products or any  
3 component parts thereof to 3 Sprouts.

#### 4 **5.2 3 Sprouts Release of Davia**

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

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

18 3 Sprouts expressly waives and relinquishes any and all rights and benefits which it may  
19 have under, or which may be conferred on it by the provisions of Section 1542 of the California  
20 Civil Code as well as under any other state or federal statute or common law principle of similar  
21 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the  
22 released matters identified in this Section 5.2. In furtherance of such intention, the release hereby  
23 given shall be and remain in effect as a full and complete release notwithstanding the discovery or  
24 existence of any such additional or different claims or facts arising out of the released matters.

#### 24 **6. SEVERABILITY**

25 If, subsequent to Court approval of this Agreement, any of the provisions of this Agreement  
26 are determined by a Court to be unenforceable, so long as all Parties agree, the validity of the  
27 enforceable provisions remaining shall not be adversely affected, unless the Court finds that any  
28

unenforceable provision is not severable from the remainder of the Agreement.

**7. COURT APPROVAL**

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

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

If this Agreement is not entered by the Court, and the Parties have exhausted their meet and confer efforts pursuant to this Section 7, upon 15 days written notice, the law firm holding Settling Defendant's funds in trust shall refund any and all payments made into its trust account by Settling Defendant as requested.

**8. GOVERNING LAW**

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

**9. NOTICES**

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

For 3 Sprouts, to:

Banu Khurana  
Grenadine Apparel, Inc., dba 3 Sprouts  
385 Silver Star Blvd, Ste. 302  
Toronto, ON M1V 0E3  
Canada

With electronic mail copy to their counsel at:

1 Ann Grimaldi, Esq.  
2 Grimaldi Law Offices  
3 50 California St. #1500  
4 San Francisco, CA 94111  
5 [ann.grimaldi@grimaldilawoffices.com](mailto:ann.grimaldi@grimaldilawoffices.com)

6 For Davia to:

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

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

13 The Parties agree that any notice of entry of any order approving this settlement or  
14 entering judgment may be provided by electronic mail delivery of such notice to 3 Sprouts'  
15 counsel.

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

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

19 **11. MODIFICATION**

20 This Agreement may be modified only: (1) by a written agreement of the Parties approved  
21 by the Court; or (2) upon a successful motion of any Party and approval of a modified Agreement  
22 by the Court.

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

24 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion  
25 is required to obtain judicial approval of this Agreement. In furtherance of obtaining such  
26 approval, Davia and Settling Defendant, and its counsel, agree to mutually employ their best efforts  
27 to support the entry of this Agreement as a settlement agreement and obtain approval of the  
28 Agreement - sufficient to render an order approving this agreement - by the Court in a timely  
manner. Any effort by Settling Defendant to impede judicial approval of this Agreement shall  
subject such impeding party to liability for attorney fees and costs incurred by plaintiff or her  
counsel in their efforts to meet or oppose such Settling Defendant's impeding conduct. Settling

1 Defendant's neutral position on matters raised by or during the court approval proceeding shall not  
2 be deemed to be impeding behavior under this section

3 **13. ENTIRE AGREEMENT**

4 This Settlement contains the sole and entire agreement and understanding of the Parties  
5 with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,  
6 commitments, and understandings related hereto. No representations, oral or otherwise, express or  
7 implied, other than those contained herein have been made by any Party hereto. No other  
8 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind  
9 any of the Parties. No supplementation, modification, waiver, or termination of this Agreement  
10 shall be binding unless executed in writing by the Party to be bound and approved by the Court  
11 pursuant to Section 11. No waiver of any of the provisions of this Agreement shall be deemed or  
12 shall constitute a waiver of any of the other provisions whether or not similar, nor shall such  
13 waiver constitute a continuing waiver

14 **14. ATTORNEY'S FEES**

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

24 **14.2** Except as specifically provided in the above paragraph and in Section 4.3, each  
25 Party shall bear its own costs and attorney's fees in connection with this action.

26 **14.3** Nothing in this Section 14 shall preclude a Party from seeking an award of  
27 sanctions pursuant to law.  
28

1 **15. NEUTRAL CONSTRUCTION**

2 All Parties and their counsel have participated in the preparation of this Agreement and this  
3 Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision  
4 and modification by the Parties and has been accepted and approved as to its final form by all  
5 Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement  
6 shall not be interpreted against any Party as a result of the manner of the preparation of this  
7 Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing  
8 that ambiguities are to be resolved against the drafting Party should not be employed in the  
9 interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code  
10 Section 1654.

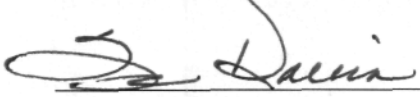

11 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

15 **17. AUTHORIZATION**

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

19 **IT IS SO AGREED**

|  |   |
|--|---|
| <p>20 Dated: January <u>16</u>, 2017</p> <p>21 </p> <p>22 _____</p> <p>23 Plaintiff Susan Davia</p> | <p>20 Dated: January <u>20</u>, 2017</p> <p>21 </p> <p>22 _____</p> <p>23 Banu Khurana</p> <p>24 Grenadine Apparel Inc., dba 3 Sprouts</p> |
|--|---|