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Attorneys for Plaintiff
SUSAN DAVIA

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

SUSAN DAVIA,

Plaintiff,

v.

BE WICKED, INC., WAL-MART STORES,
INC., AMAZON.COM, INC. and DOES 1-
150,

Defendants.

Case No. CIV 1704091

**PROPOSITION 65 CONSENT TO
JUDGMENT SETTLEMENT
AGREEMENT**

Action Filed: November 6, 2017
Trial Date: January 6, 2020

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 Susan Davia (“Davia”), and defendant Be Wicked, Inc. (“Be
5 Wicked” or “Be Wicked.” Be Wicked and Davia are the “Parties” to this Agreement.

6 **1.2 Plaintiff Susan Davia**

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

10 **1.3 Be Wicked**

11 Davia alleges that Be Wicked, Inc. is a person in the course of doing business for purposes
12 of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§
13 25249.6 *et seq.* (“Proposition 65”). For purposes of this Agreement only, Be Wicked does not
14 dispute that they qualify as such a person in the course of doing business.

15 **1.4 General Allegations**

16 Davia alleges that Be Wicked participated in the manufacture (or other acquisition),
17 distribution and/or sale, in the State of California, of vinyl/PVC packaging and storage cases for
18 costume and/or costume accessories, which packaging or storage cases exposed users to di(2-
19 ethylhexyl)phthalate (DEHP) and di(isononyl)phthalate (DINP) without first providing a “clear
20 and reasonable warning” under Proposition 65. DEHP and DINP are listed as carcinogens and/or
21 reproductive and developmental toxins pursuant to Proposition 65. DEHP and DINP shall
22 hereinafter, where applicable, be referred to as the “Listed Chemical” or “Listed Chemicals” as the
23 case may be. Plaintiff does not contend that any products packaged inside the Covered Packaging
24 sold by Be Wicked contain any listed phthalates or other Listed Chemicals in alleged violation of
25 Proposition 65.
26

27 **1.5 Notices of Violation**

28 On February 28, 2017, and July 6, 2017, Davia served Be Wicked and various public

1 enforcement agencies with a document entitled "60-Day Notice of Violation" that provided public
2 enforcers and the noticed entities with notice of alleged violations of Health & Safety Code §
3 25249.6 for failing to warn consumers of the presence of DEHP and DINP found in Covered
4 Packaging sold in California. Be Wicked received each 60-Day Notice of Violation (the "Notice"
5 or "Notices").

6 Be Wicked and Davia represent that, as of the date each executes this Agreement, it is not
7 aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action
8 related to DEHP or DINP in the Covered Packaging as identified in that Be Wicked's 60-Day
9 Notice.

10 **1.6 Complaint**

11 On November 6, 2017, Plaintiff filed a complaint in the Superior Court of California for the
12 County of Marin, Case No. CIV 1704091, alleging violations by Be Wicked, DOE and other
13 defendants of Health & Safety Code § 25249.6 based, *inter alia*, on the alleged exposure to DEHP
14 and DINP contained in Covered Packaging (hereinafter "Action" or "Complaint").

15 **1.7 No Admission**

16 This Agreement resolves claims that are denied and disputed by Be Wicked. The Parties
17 enter into this Agreement pursuant to a full and final settlement of any and all claims between the
18 Parties for the purpose of avoiding prolonged litigation. Be Wicked denies the material factual
19 and legal allegations contained in the Notices and Complaint and expressly maintains that it did
20 not knowingly or intentionally expose California consumers to any listed chemicals through the
21 reasonably foreseeable use of the Covered Packaging, and otherwise contend that all Covered
22 Packaging and products it has manufactured, distributed and/or sold in California have been and
23 are in compliance with all applicable laws, and are completely safe for their intended use.
24 Nothing in this Agreement shall be construed as an admission by Be Wicked of any fact, finding,
25 issue of law, or violation of law, nor shall compliance with this Agreement constitute or be
26 construed as an admission by the Be Wicked of any fact, finding, conclusion, issue of law, or
27 violation of law, such being specifically denied by Be Wicked. Notwithstanding the foregoing,
28 this section shall not diminish or otherwise affect Be Wicked's obligations, responsibilities, and

1 duties under this Agreement.

2 **1.8 Consent to Jurisdiction**

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

8 **2. DEFINITIONS**

9 **2.1** The term “Packaging” or “Covered Packaging” shall mean all Be Wicked brand
10 costume and costume accessory packaging and storage cases made in whole or in part with
11 vinyl/PVC that are or will be sold in California, including, but definitely not limited to, Be
12 Wicked item BW095 (all colors), BW094 (all colors), BW090 (all colors), BW1082 (all sizes), BW1278
13 (all sizes), BW1120 (all sizes), BW 993 (all sizes), BW1062 (all sizes)

14 **2.2** The term “Phthalate Free” Covered Packaging shall mean that each accessible
15 component of any Covered Packaging contains less than or equal to 1,000 parts per million
16 (“ppm”) each of DEHP, DBP, DINP, DIDP, DnHP and BBP as determined by a minimum of
17 duplicate quality controlled test results using Environmental Protection Agency (“EPA”) testing
18 methodologies 3580A and 8270C, or equivalent methodologies used by state or federal agencies
19 for purposes of determining DEHP or other listed phthalate content in a solid substance. Davia
20 agrees that Covered Packaging meeting this reformulation standard complies with Proposition 65
21 for DEHP, DBP, DINP, DIDP, DnHP and BBP.

22 **2.3** “Effective Date” shall mean April 1, 2018.

23 **3. INJUNCTIVE RELIEF**

24 **3.1 Covered Packaging Reformulation Commitment**

25 **3.1.1** No later than the Effective Date or the date of first Covered Packaging order
26 thereafter, Be Wicked shall provide the Phthalate Free concentration standards of Section 2.2 to the
27 manufacturer or vendors of any Covered Packaging and the vinyl/PVC components thereof and
28 instruct each such entity not to incorporate any raw or component materials that do not meet the

1 Phthalate Free concentration standards of Section 2.2 into any such Covered Packaging. Be
2 Wicked shall maintain copies of all vendor correspondence relating to the Covered Packaging
3 Phthalate Free concentration standard for two years after the Effective Date, and shall produce
4 such copies to Davia within fifteen (15) days of receipt of Davia's reasonable written request.

5 **3.1.2** After the Effective Date, Be Wicked shall provide the Phthalate Free concentration
6 standards of Section 2.2 to any new manufacturer or vendor of the Covered Packaging, and any
7 vinyl/PVC component thereof, and instruct such manufacturer or vendor not to incorporate any
8 raw or component materials that do not meet the Phthalate Free concentration standards of
9 Section 2.2 into any such Covered Packaging. Prior to the purchase or acquisition of any Covered
10 Packaging from such new manufacturer or vendor, Be Wicked shall obtain a written confirmation
11 and accompanying laboratory test result from the new manufacturer or vendor demonstrating the
12 Covered Packaging's compliance with the Phthalate Free concentration standard. For every
13 Covered Packaging Be Wicked manufacture, cause to be manufactured, order, cause to be ordered
14 or otherwise obtain from a new vendor after the Effective Date, Be Wicked shall maintain copies,
15 for two years after the Effective Date, of all testing of such Covered Packaging demonstrating
16 compliance with this section, and copies of all vendor correspondence relating to the Phthalate
17 Free concentration standard, and shall produce such copies to Davia within fifteen (15) days of
18 receipt of written request from Davia.

19 **3.1.3** No later than 30 days after the Effective Date, Be Wicked shall not manufacture or
20 cause to be manufactured, order or cause to be ordered any Covered Packaging that is not
21 Phthalate Free.

22 **3.2 Covered Packaging Labels for Existing Inventory**

23 As of the Effective Date, Be Wicked shall not sell or ship any Covered Packaging that it
24 reasonably understands is not Phthalate Free to a California vendor or retailer, or to a vendor or
25 retailer that Be Wicked reasonably understands maintains retail outlets in California, unless such
26 Covered Packaging is sold or shipped with labeling or a sticker containing language directing that
27 the packaging be discarded after opening. If Be Wicked uses a sticker on any Covered Packaging
28 to communicate the notice required by this section, such sticker shall be no less than 4 square

centimeters and shall be comprised of black font letters on a white adhesive label. Each Covered Packaging label or sticker containing this language shall be prominently placed on the Covered Packaging so as to render it likely to be read and understood by an ordinary individual under customary conditions *before* use.

4. MONETARY PAYMENTS

4.1 Civil Penalty

As a condition of settlement of all the claims referred to in the Notices, Complaint and this Agreement, Be Wicked shall pay \$3,500 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1) & (d). Be Wicked's payment of this civil penalty does not automatically render Davia the prevailing party in this Action.

4.2 Augmentation of Penalty Payments

For purposes of the penalty assessment under this Agreement, Davia is relying upon Be Wicked and their counsel for accurate, good faith reporting to Davia of the nature and amounts of relevant sales activity and/or annual revenue providing a reasonable basis on which to estimate such sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents to Be Wicked evidence that its sales materially exceeded that which was previously represented during discovery, the Parties shall have a period of 30 days to meet and confer concerning such evidence, and Be Wicked shall have the opportunity to present to Plaintiff any evidence to the contrary. If the Parties can agree on an appropriate disposition, then Be Wicked shall submit payment of any agreed additional civil penalties and attorney's fees related to plaintiff's investigation of such defendant's annual revenues and/or sales activity within 30 days in accordance with the method of payment of penalties and fees specified in Sections 4.1, 4.3 and 4.4. Plaintiff shall submit an application to the Court for approval of any agreed civil penalty payment or attorney fee/cost reimbursement payment that exceeds \$12,000. If the Parties cannot agree on an appropriate disposition within 30 days, Davia shall be entitled to file a motion against the applicable Be Wicked for additional civil penalties pursuant to this section. The prevailing party on any such motion shall be entitled to its reasonable fees and costs incurred in prosecuting or defending such motion.

1 **4.3** Reimbursement of Davia's Fees and Costs

2 The Parties do not resolve any reimbursement of plaintiff's attorney fees or costs with this
3 settlement. Plaintiff reserves, and shall have, the right to timely submit an application for an
4 award of attorney fees and costs after entry judgment upon this settlement.

5 **4.4** Payment Procedures

6 Be Wicked shall pay the Section 4.1 civil penalty amount by a civil penalty check in the
7 amount of \$2,625 payable to "OEHHA" (Memo line "Prop 65 Penalties, AG 2017-00245") and a
8 civil penalty check in the amount of \$875 to "Susan Davia" (Memo line "Prop 65 Penalties, AG
9 2017-00245").

10 All Section 4.1 civil penalty payments shall be delivered to Be Wicked's counsel within ten
11 days of the date this Agreement is executed by Be Wicked. Be Wicked's counsel shall confirm
12 receipt of settlement checks in writing to Plaintiff's counsel and, thereafter, hold the checks in
13 trust until such time as the Court approves the settlement as to Be Wicked. Within five business
14 days of the date Davia or her counsel provide electronic mail notice to Be Wicked's counsel that
15 the Court has approved the Agreement as to Be Wicked, their counsel shall deliver the civil
16 penalty settlement checks it has held in trust to Plaintiff's counsel as follows:

17 Sheffer Law Firm
18 Attn: Proposition 65 Controller
19 81 Throckmorton Ave., Suite 202
20 Mill Valley, CA 94941

21 All Section 4.2 civil penalty payments, if any, shall be delivered to plaintiff's counsel at the
22 following address on or before the date agreed upon pursuant to that section:

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

27 Be Wicked shall be liable for payment of interest, at a rate of 10% simple interest, for all
28 amounts due and owing from it under Section 4.1 and Section 4.2 that are not received by Sheffer
Law Firm within fifteen business days of the due date for such payment.

1 **4.5** Issuance of 1099 Forms

2 After this Agreement has been executed and the settlement funds have been transmitted to
3 Davia's counsel, Be Wicked shall issue three separate 1099 forms, as follows, for its settlement
4 payments specified in its Exhibit A:

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

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

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

13 **4.6** Delayed or Non-Payment of Civil Penalties

14 While the obligations of this Agreement are binding upon execution, the Release of Be Wicked
15 shall not become effective as to a Be Wicked until after Be Wicked's Section 4.1 monetary
16 payments have been made and all such funds have cleared.

17 **5.** RELEASES

18 **5.1** Davia's Release of Be Wicked

19 **5.1.1** This Agreement is a full, final and binding resolution between Davia, on behalf of
20 herself and in the public interest, and Be Wicked, of all violations of Proposition 65 asserted by
21 Davia on behalf of herself and her representatives and attorneys, against Be Wicked, their
22 directors, officers, employees, attorneys and each entity to whom Be Wicked directly or indirectly
23 distribute or sell products in Covered Packaging, including, but not limited to, retailers,
24 downstream distributors, wholesalers, customers, franchisees, cooperative members, and licensees
25 (collectively "Releasees"), based on their failure to warn about alleged exposures to Listed
26 Chemicals contained in Covered Packaging manufactured, distributed, sold and/or offered for
27 sale by Be Wicked in California before the Effective Date.

1 **5.1.2** In further consideration of the promises and agreements herein contained, Davia,
2 on behalf of herself and her past and current representatives and attorneys, hereby waives all
3 Davia's rights to institute or participate in, directly or indirectly, any form of legal action, and
4 releases all claims that Davia may have against the Releasees, including, without limitation, all
5 actions, and causes of action, in law or in equity, arising under Proposition 65 with respect to
6 Listed Chemicals in Covered Packaging manufactured, distributed, sold and/or offered for sale by
7 Be Wicked before the Effective Date.

8 **5.1.3** Davia also, in her individual capacity, on behalf of herself and her past and current
9 representatives and attorneys, provides a general release herein, which shall be effective as a full
10 and final accord and satisfaction, and operate as a bar to all actions, causes of action, of any
11 nature, character or kind, known or unknown, suspected or unsuspected, arising out of Covered
12 Packaging manufactured, distributed or sold by Be Wicked or Releasees prior to the Effective
13 Date. Davia acknowledges that she is familiar with Section 1542 of the California Civil Code,
14 which provides as follows:

15 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
16 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
17 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
18 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
PARTY.

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

28 The Parties understand and agree that this Section 5.1 Release does not release or resolve

1 any claim by Davia for reimbursement of the attorney fees or costs incurred by plaintiff in the
2 prosecution of her claims against Be Wicked. This Section 5.1 Release expressly does not release
3 Be Wicked from potential reimbursement or other payment of such fees and costs. Plaintiff
4 expressly reserves to plaintiff the right to pursue recovery of any such fees and costs through any
5 legal process, including application to this Court after entry of judgment in this action.

6 The Parties further understand and agree that this Section 5.1 release shall not extend
7 upstream to any entities, other than Be Wicked, that manufactured the Covered Packaging or any
8 component parts thereof, or any distributors or suppliers who sold the Covered Packaging or any
9 component parts thereof to Be Wicked.

10 **5.2 Be Wicked' Release of Davia**

11 Be Wicked, on behalf of itself, their past and current agents, representatives, attorneys,
12 successors, and/or assignees, hereby waives any and all claims against Davia and her attorneys
13 and other representatives, for any and all actions taken or statements made (or those that could
14 have been taken or made) by Davia and her attorneys and other representatives, whether in the
15 course of investigating claims, otherwise seeking to enforce Proposition 65 against them in this
16 matter, or with respect to Covered Packaging. Be Wicked acknowledges that it is familiar with
17 Section 1542 of the California Civil Code, which provides as follows:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
19 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
20 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE
21 AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY
22 AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
23 PARTY.

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

1 **6. POST SETTLEMENT ACTIVITIES AND COURT APPROVAL**

2 **6.1** The Parties acknowledge that, pursuant to California Health & Safety Code §
3 25249.7, a noticed motion is required to obtain judicial approval of this Agreement, which Plaintiff
4 shall prepare and file. In furtherance of obtaining such approval, the Parties and their respective
5 counsel agree to mutually employ their best efforts to support the entry of this Agreement as an
6 Agreement and obtain approval of the Agreement by the Court in a timely manner. For purposes
7 of this section, best efforts shall include, at a minimum, cooperating on the drafting and filing of
8 any papers in support of the required motion for judicial approval. The Parties further agree to
9 accept service of notice of entry of any order on Plaintiff's motion to approve the settlement
10 and/or enter judgment by electronic mail delivery to Be Wicked's counsel of record or other
11 electronic mail recipient expressly designated for purposes of this section.

12 **6.2** If this Agreement is not approved by the Court in its entirety, the Parties shall meet
13 and confer to determine whether to modify the terms of the Agreement and to resubmit it for
14 approval. In meeting and conferring, the Parties agree to undertake any actions reasonably
15 necessary to amend and/or modify this Agreement in order to further the mutual intention of the
16 Parties in entering into this Agreement.

17 **6.3** If this Agreement is not entered by the Court within one year of the Effective Date,
18 it shall be of no force or effect and shall never be introduced into evidence or otherwise used in
19 any proceeding for any purpose other than to determine the rights or obligations of a Party as a
20 result of the fact that the Agreement was not approved.

21 **6.4** If this Agreement is not entered by the Court, and the Parties have exhausted their
22 meet and confer efforts pursuant to Section 6.2, upon 15 days written notice, the law firm holding
23 Be Wicked's funds or settlement checks in trust shall refund any and all payments or settlement
24 checks held in trust for Be Wicked as requested.

25 **7. SEVERABILITY**

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

1 Agreement.

2 8. GOVERNING LAW

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

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, electronically tracked express delivery (e.g., FedEx, US Postal, UPS, etc.) or
12 electronic mail, for no more than two-day delivery, to the following:

13 For Be Wicked, Inc.:

14 Pedram Labib, CEO
15 Be Wicked, Inc.
16 1020 Wilde Street
17 Los Angeles, CA 90021
sourcingusallc@gmail.com

18 With a copy to their counsel:

19 Elyashar Law Firm
20 Henry A. Elyashar
21 18345 Ventura Blvd., Suite 500
22 Tarzana, CA 91356
henry@elyasharlaw.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 under this section is to
be sent by sending the other Party notice by certified mail and./or some 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
3 Health & Safety Code §25249.7(f).

4 **11. MODIFICATION**

5 This Agreement may be modified only by written agreement of the Parties or court order
6 after agreement of the Parties.

7 **12. ENTIRE AGREEMENT**

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

18 **13. ENFORCEMENT**

19 Prior to pursuit of any action by plaintiff to enforce a violation of this Agreement, or
20 pursuit of any action under Proposition 65, or to otherwise enforce the terms of the Agreement,
21 including an alleged violation of the remedial action requirements of Section 3, plaintiff shall
22 provide written notice of the alleged violation(s) to Be Wicked along with clear and concise
23 instruction on how to comply. Be Wicked shall have a period of sixty (60) days from receipt of the
24 written notice to comply with such instruction or otherwise cure the identified violation and
25 confirm such compliance or cure, in a writing detailing the time and nature of any curative action,
26 to plaintiff. If such alleged violation is not cured or otherwise removed after the expiration of this
27 sixty (60) day period, plaintiff shall be entitled to take any and all appropriate legal action to
28 enforce the terms of this Agreement.

1 **14. ATTORNEY’S FEES**

2 **14.1** Should Davia prevail on any motion, application for order to show cause or
3 other proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable
4 attorney’s fees and costs incurred as a result of such motion, order or application, consistent with
5 C.C.P. § 1021.5. Should Be Wicked prevail on any motion, application for order to show cause or
6 other proceeding to enforce a violation of this Agreement, Be Wicked shall be entitled to its
7 reasonable attorney’s fees and costs incurred as a result of such motion, order or application upon
8 a 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
10 used 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 Notices, the Complaint and this Agreement.

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

15 **15. NEUTRAL CONSTRUCTION**

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

25 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

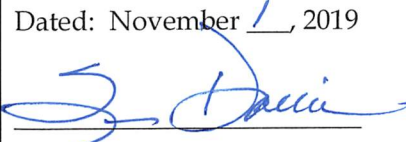
26 This Agreement may be executed in counterparts and by facsimile or portable document
27 format (PDF), each of which shall be deemed an original, and all of which, when taken together,
28 shall constitute one and the same document.

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17. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: November __, 2019</p> <p>_____</p> <p>Pedram Labib, CEO Be Wicked, Inc.</p>	<p>Dated: November <u>1</u>, 2019</p> <p> _____ Susan Davia</p>
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1 **17. AUTHORIZATION**

2 The undersigned parties are authorized to execute this Agreement and have read,
3 understood, and agree to all of the terms and conditions of this Agreement.

4 **IT IS SO AGREED**

5
6 Dated: November 1, 2019

7
8 _____
9 Pedram Labib, CEO
10 Be Wicked, Inc.

11 Dated: November __, 2019

12
13 _____
14 Susan Davia