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4 Attorneys for Plaintiff
5 SUSAN DAVIA

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

SUSAN DAVIA,
Plaintiff,
v.
JERGENS, INC. and DOES 1-150,
Defendants.

Case No. CIV1902031

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

Action Filed: May 24, 2019
Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and
4 between Susan Davia (“Davia”), on the one hand, and Jergens, Inc. (“Jergens”), on the other hand,
5 with Davia and Jergens collectively referred to as the “Parties.”

6 **1.2 Davia**

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

10 **1.3 Jergens, Inc.**

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

14 **1.4 General Allegations**

15 Davia alleges that Jergens participated in the manufacture, distribution and/or sale, in the
16 State of California, of toggle clamp products with vinyl tips and grips made with materials that
17 exposed users to di(2-ethylhexyl)phthalate (“DEHP”) and diisononyl phthalate (“DINP”) without
18 first providing a “clear and reasonable warning” under Proposition 65. DEHP is listed as a
19 carcinogen and reproductive toxin pursuant to Proposition 65. DINP is listed as a carcinogen
20 pursuant to Proposition 65. DEHP and DINP shall hereafter collectively be referred to hereinafter as
21 the “Listed Chemical”.

22 **1.5 Notices of Violation**

23 On December 6, 2018, Davia served Jergens and various public enforcement agencies with a
24 document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed
25 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
26 consumers of the presence of the Listed Chemical found in the Covered Products (defined hereafter)
27 sold in California (AG Notice 2018-02200). The December 6, 2018, 60-Day Notice of Violation served
28 on Jergens shall be referred to herein as the “Notice.”

1 Jergens received the Notice. Jergens represents that, as of the date it executes this Agreement,
2 it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement
3 action related to the Listed Chemical in the Covered Products, as identified in the Notice.

4 **1.6 Complaint**

5 On May 24, 2019, Davia filed a Complaint in the Superior Court of the State of California for
6 the County of Marin, Case No. CIV1902031, alleging violations by Jergens of Health and Safety Code
7 § 25249.6 based on the alleged exposures to DEHP and DINP in the Covered Product (defined
8 below)(the “Action”).

9 **1.7 No Admission**

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

22 **1.8 Consent to Jurisdiction**

23 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
24 Court has jurisdiction over Jergens as to the allegations in the 60-Day Notice received from Davia,
25 and this Agreement, that venue is proper in County of Marin, and that the Marin County Superior
26 Court has jurisdiction over the Parties and any action to enforce the provisions of this Agreement.

27 **2. DEFINITIONS**

28 **2.1** The term “Product(s)” or “Covered Product(s)” shall mean all Jergens brand toggle

1 clamp products with vinyl tips and/or grips, including, but not limited to models 70002, 70042, 70018
2 and 70029.

3 **2.2** The term “Phthalate Free” Covered Products shall mean that each vinyl component of
4 each Covered Product contains less than or equal to 1,000 parts per million (“ppm”) of di(2-
5 ethylhexyl) phthalate (“DEHP”), dibutyl phthalate (“DBP”), diisononyl phthalate (“DINP”),
6 diisodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”) and butyl benzyl phthalate (“BBP”)
7 as determined test results using Environmental Protection Agency (“EPA”) testing methodologies
8 3580A and 8270C.

9 **2.3** “California Customer” shall mean any customer located in California, any customer
10 with a California ship to address, any customer that Jergens reasonably understands operates a retail
11 store in California and any ecommerce customer that Jergens reasonably understands sells to
12 consumers in California

13 **2.4** “Effective Date” shall mean May 15, 2019.

14 **3. INJUNCTIVE-TYPE RELIEF**

15 **3.1 Product Reformulation Commitment**

16 **3.1.1** No later than the Effective Date, Jergens shall provide the Phthalate Free phthalate
17 concentration standards of Section 2.2 to its then-current vendors of any Covered Product and
18 instruct such entities not to provide any Covered Product that does not meet the Phthalate Free
19 concentration standards of Section 2.2 as soon as possible but, in all events, no later than July 1, 2019.
20 Jergens shall maintain copies of all vendor correspondence relating to the Phthalate Free
21 concentration standards for two (2) years after the Effective Date and shall produce such copies to
22 Davia within fifteen (15) days of receipt of reasonable request made in writing from Davia.


23 **3.1.2** After the Effective Date, Jergens shall provide the Phthalate Free phthalate
24 concentration standards of Section 2.2 to any New Vendors of any Covered Products and instruct
25 such entities not to provide any Covered Products that do not meet the Phthalate Free concentration
26 standards of Section 2.2. “New Vendors” means vendors of Covered Products from whom Jergens
27 was not obtaining Covered Product as of the Effective Date. Prior to purchase and acquisition of any
28 Covered Product from any New Vendor, Jergens shall obtain written confirmation and laboratory

1 test result from the New Vendor demonstrating compliance with the Phthalate Free phthalate
2 concentration standard for any Covered Product. For two (2) years after the Effective Date, for every
3 Covered Product Jergens manufactures, causes to be manufactured, orders, causes to be ordered or
4 otherwise obtains from a New Vendor, Jergens shall maintain copies of all testing of such products
5 demonstrating compliance with this section, shall maintain copies of all vendor correspondence
6 relating to the Phthalate Free concentration standards and shall produce such copies to Davia within
7 fifteen (15) days of receipt of reasonable request made in writing from Davia.


8 **3.1.3** As of July 1, 2019, Jergens shall not manufacture, cause to be manufactured, order or
9 cause to be ordered any Covered Product for sale to a California Customer that is not Phthalate Free.
10 For every Covered Product Jergens manufactures, causes to be manufactured, orders, causes to be
11 ordered or otherwise sells after the Effective Date, Jergens shall, for a period of two (2) years after
12 placing the order, maintain copies of all testing of the vinyl components of such product
13 demonstrating compliance with this section, shall maintain copies of all vendor correspondence
14 relating to the Phthalate Free concentration standards of Section 2.2 and shall produce such copies to
15 Davia within fifteen (15) days of receipt of reasonable request made in writing from Davia.

16 **3.2 Previously Distributed Covered Products.**

17 **3.2.1** Customer Notification - No later than the Effective Date, Jergens shall send a letter,
18 electronic or otherwise ("Notification Letter") to: (1) each retailer or distributor in California to which
19 it, after December 1, 2017, supplied any Covered Product and (2) any other retailer or distributor in
20 California that Jergens reasonably understands or believes has any inventory of Covered Product.
21 The Notification Letter shall advise the recipient that Covered Product contains DEHP and DINP,
22 chemicals known to the State of California to cause cancer and birth defects or other reproductive
23 harm. The Notification letter shall inform the recipient that all Covered Product must either have a
24 label attached to the packaging or on a shelf sign proximate to the display of Covered Product,
25 expressly referring to the Covered Product, which label or sign contains one of the following
26 warnings, before it is sold in the California market or to a California customer. The Notification
27 Letter shall include a sheet of white background, adhesive stickers with one of the following warning
28 statements in no less than Book Antiqua, point 9 font (or its equivalent):

1
2  **WARNING:** [The vinyl grips and tips for] this
3 product can expose you to chemicals, including di(2-
4 ethylhexyl)phthalate (DEHP) and diisononyl phthalate
5 (DINP), that are known to the State of California to
6 cause cancer and birth defects or other reproductive
7 harm. For more information go to
8 www.P65Warnings.ca.gov;

9 or

10  **WARNING:** [for the vinyl tips and grips of this
11 product -] Cancer and Reproductive Harm -
12 www.P65Warnings.ca.gov

13 The bracketed language is optional. The Notification Letter shall be sent with return receipt
14 requested. The Notification Letter shall request written confirmation from the recipient, within 15
15 days of receipt, that all such inventory for California sale has been, or will be, labelled with the
16 warning language identified in this section.


17 **3.2.2** Jergens shall maintain records of compliance correspondence, inventory reports or
18 other communication confirming compliance with Section 3.2.1 for two (2) years from the Effective
19 Date and shall produce copies of such records upon reasonable written request by Davia.

20 **3.3 Existing Inventory Product Labels**

21 For any Covered Product ordered by Jergens before July 1, 2019, Jergens shall not sell or ship
22 any of such Covered Product unless Jergens has confirmed the Covered Product is Phthalate Free or
23 Jergens has complied with all warning requirements set forth in this Section 3.3.

24 **3.3.1 Covered Product Label.**

25 For all non-Phthalate Free Covered Product ordered by Jergens before July 1, 2019, and sold
26 to a California Customer Jergens shall affix a label to the Covered Product that states:

27  **WARNING:** [The vinyl grips and tips for] this
28 product can expose you to chemicals, including di(2-
ethylhexyl)phthalate (DEHP) and diisononyl phthalate
(DINP), that are known to the State of California to
cause cancer and birth defects or other reproductive
harm. For more information go to



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www.P65Warnings.ca.gov;

or

WARNING: [for the vinyl tips and grips of this product -] Cancer and Reproductive Harm -
www.P65Warnings.ca.gov

The bracketed language is optional. The label shall be prominently affixed with such conspicuousness as compared with other words, statements, designs, or devices, as to render it likely to be read and understood by an ordinary individual under customary conditions *before* purchase or use.

3.3.2 Mail Order Catalog Warning

For all Covered Product ordered by Jergens before July 1, 2019, **and** sold or offered for sale by Jergens via catalog to any California Customers, any such catalog shall include a warning in the catalog identifying the specific Covered Product to which the warning applies, as specified below. For all mail order catalogs printed after six (6) months from the Effective Date, any warning provided in such catalog must be in the same type size or larger than the Covered Product description text within the catalog. The following warning shall be provided on the same page and in the same location as the display and/or description of the Covered Product:

⚠WARNING: This product can expose you to chemicals, including DEHP and DINP, that are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Alternatively, the following “short form” warning may be used in the catalog *only* if the same warning language also appears on the product label or consumer packaging itself.

⚠WARNING: Cancer and Reproductive Harm -
www.P65Warnings.ca.gov.

3.3.3 Internet Website Warning

For all Covered Product ordered by Jergens before July 1, 2019, and sold or offered for sale by Jergens via the Internet to any California Customers, Jergens shall display to the California Customer

1 a warning. A warning will satisfy this requirement if it appears either: (a) on the same web page on
2 which a Covered Product is displayed; (b) on the same web page as the order form for a Covered
3 Product; (c) on the same page as the price for any Covered Product; or (d) on one or more web pages
4 displayed to a purchaser that is a California Customer during the checkout process. One of the
5 following warning statements shall be used and shall appear in any of the above instances adjacent
6 to or immediately following the display, description, or price of the Covered Product for which it is
7 given, or through a hyperlink using the word "WARNING", in the same type size or larger than the
8 Covered Product description text:

9
10 **⚠WARNING:** This product can expose you to chemicals,
11 including DEHP and DINP, that are known to the State of
12 California to cause cancer and birth defects or other
13 reproductive harm. For more information go to
14 www.P65Warnings.ca.gov.

15 Alternatively, the following "short form" warning may be used in the catalog if the same warning
16 language also appears on the product label or consumer packaging itself.

17 **⚠WARNING:** Cancer and Reproductive Harm -
18 www.P65Warnings.ca.gov.

19 **4. MONETARY PAYMENTS**

20 **4.1 Civil Penalty**

21 As a condition of settlement of all the claims referred to in this Settlement Agreement,
22 Jergens shall cause to be paid a total of \$5,000 in civil penalties in accordance with California Health
& Safety Code § 25249.12(c)(1) & (d).

23 **4.2 Augmentation of Penalty Payments**

24 For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon
25 Jergens and its counsel for accurate, good faith reporting to Davia of the nature and amounts of sales
26 activity of the Covered Products. If within nine (9) months of the Effective Date, Davia discovers and
27 presents to Jergens evidence that the Covered Products have been distributed in California by Jergens
28 in sales volumes materially different (more than 25%) than those identified by Jergens prior to

1 execution of this Agreement, then Jergens shall be liable for an additional penalty amount of
2 \$10,000.00. Jergens shall also pay reasonable, additional attorney fees expended by Davia in
3 discovering such additional sales and reporting them to Jergens in accordance with this section.
4 Davia agrees to provide Jergens with a written demand for such additional penalties and attorney
5 fees under this Section. Davia agrees that any attorney fee demand shall be supported by time
6 records as required by California law. After service of such demand, Jergens shall have thirty (30)
7 days to either pay the additional civil penalty and fee amount demanded or negotiate with Davia as
8 to an agreed amount of fees and penalties to be paid in accordance with the method of payment of
9 penalties and fees identified in Section 4.4.

10 Should the Parties fail to reach an agreement as to the amount of additional penalties under
11 this section within thirty (30) days, Davia shall be entitled to file an action for breach of this
12 Agreement in which the sole issues for resolution by the Court shall be whether Covered Products
13 were distributed in California by Jergens in sales volumes materially different (more than 25%) than
14 those identified by Jergens prior to execution of this Agreement. The prevailing Party on any such
15 action for breach shall be entitled to recover their reasonable attorney fees and costs related to the
16 action.

17 Should the Parties reach an agreement on an additional civil penalty within the thirty day
18 period, but be unable to agree on the amount of attorney fees and costs due Davia under this section,
19 the Parties shall attempt, in good faith, to mediate this remaining dispute within the following sixty
20 (60) day period. If the Parties cannot resolve the fee/cost dispute in mediation, or cannot achieve
21 mediation within this sixty day period, then Davia may file any appropriate court action for recovery
22 of any fees and/or costs expended by Davia in discovering additional sales and reporting them to
23 Jergens in accordance with this section and each Party shall bear their own fees and costs associated
24 with such action.

25 **4.3 Reimbursement of Davia's Fees and Costs**

26 The Parties acknowledge that Davia and her counsel refused to consider any reimbursement
27 of plaintiff's fees or costs until all other terms of the settlement were reached. The Parties then
28 reached an accord on the reimbursement due to Davia and compensation of her counsel under

1 general contract principles and consistent with the private attorney general doctrine codified at
2 California Code of Civil Procedure section 1021.5, in the amount of \$23,500 for fees and costs incurred
3 investigating and negotiating a resolution of this matter.

4 **4.4 Mutual Waiver of Certain Attorney Fees**

5 As a material term of this Agreement, and as an express condition upon which Davia has
6 agreed to resolve the reimbursement of her counsel's fees and costs for \$23,500, Jergens and counsel
7 for Jergens hereby agree to waive all fees accrued after May 2, 2019, on, or relating to, the matter of
8 this Action, Agreement or Notice and counsel for Jergens agrees they shall not invoice or bill their
9 client for any such fees accrued after May 2, 2019. Jergens agrees it shall not pay or otherwise
10 compensate its counsel in this matter for any fees accrued on, or relating to, the matter of this
11 Agreement or Notice after May 2, 2019.

12 **4.5 Payment Procedures**

13 No later than fifteen (15) days after execution of this Agreement, Jergens shall deliver all
14 settlement payment funds required by this Agreement to its counsel. Within one (1) week of receipt
15 of the settlement funds, Jergens's counsel shall confirm receipt in writing to plaintiff's counsel and,
16 thereafter, hold Jergens's settlement checks or payment(s) until such time as the Court approves this
17 settlement as contemplated by Section 6. Within five (5) business days of the date plaintiff provides
18 electronic mail notice to counsel for Jergens that the Court has approved this settlement, Jergens's
19 counsel shall deliver the settlement payments to plaintiff's counsel as follows:

20 a civil penalty check payable to "OEHHA" (Memo line "Prop 65 Penalties, 2018-02200"), in
21 the amount of \$3,750;

22 a civil penalty check payable to "Susan Davia" (Memo line "Prop 65 Penalties, 2018-02200")
23 in the amount of \$1,250; and

24 an attorney fee and cost reimbursement check payable to "Sheffer Law Firm" (Memo line
25 "2018-02200") in the amount of \$23,500.

26 All Section 4.1 and Section 4.3 civil penalty and attorney fee/cost payments shall be delivered
27 to plaintiff's counsel at the following address:
28

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

5 All Section 4.2 civil penalty and attorney fee/cost payments, if any, shall be delivered to
6 plaintiff's counsel at the following address on or before the date agreed upon pursuant to that section
7 or as ordered by the Court:

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

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

15 While the obligations of this agreement are binding upon execution, the Release of Jergens
16 shall not become effective until after all Section 4.1 and Section 4.3 monetary payments have been
17 made by Jergens and all funds have cleared

18 **4.6 Issuance of 1099 Forms**

19 After this Agreement has been executed and funds have been transmitted to Davia's counsel
20 at the address set forth in Section 4.4., Jergens shall cause three separate 1099 forms to be issued, as
21 follows:

- 22 (a) The first 1099 shall be issued to the Office of Environmental Health Hazard
23 Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount
24 paid pursuant to Sections 4.1 and 4.2 (if any);
- 25 (b) The second 1099 shall be issued to Davia in the amount paid pursuant to
26 Sections 4.1 and 4.2 (if any), whose address and tax identification number shall be
27 provided to Jergens prior to any payments being due under this Agreement; and
- 28 (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in the
amount paid pursuant to Section 4.3 and 4.2 (if any).

1 **5. RELEASES**

2 **5.1 DAVIA'S RELEASE OF JERGENS**

3 **5.1.1** This settlement agreement is a full, final and binding resolution between
4 Davia, and Jergens of any violation of Proposition 65 that was or could have been asserted by Davia
5 on behalf of herself, her representatives or attorneys, against Jergens, its directors, officers,
6 employees, attorneys, parents, subsidiaries, and entities under common ownership ("Releasees"),
7 suppliers (but only those suppliers of Covered Product to Jergens), and each entity to whom Jergens
8 directly or indirectly distributes or sells Covered Products, including, but not limited to downstream
9 distributors and retailers ("Downstream Releasees"), based on their alleged failure to warn about
10 alleged exposures to the Listed Chemical contained in the Covered Products that were sold by Jergens
11 into California before the Effective Date. As to Davia only, Jergens's compliance with the terms of
12 this Agreement shall constitute compliance with Proposition 65 as to exposures to DINP, DIDP,
13 DEHP, DBP, BBP and DnHP in the Covered Products.

14 **5.1.2** Davia also provides a general release and waiver which shall be effective as a
15 full and final accord and satisfaction, and as a bar to all claims, actions and causes of action, of any
16 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject
17 matter of the Notice and the Covered Products, to the extent sold or distributed by Jergens prior to
18 the Effective Date, and for all actions taken and statements made (or that could have been taken or
19 made) by Jergens and its attorney's and other representatives in connection with negotiating this
20 Agreement. Davia acknowledges that she is familiar with section 1542 of the California Civil Code,
21 which provides as follows:

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

26 Davia, in her individual capacity expressly waives and relinquishes any and all rights and
27 benefits that she may have under, or which may be conferred on her by the provisions of Section 1542
28 of the California Civil Code as well as under any other state or federal statute or common law

1 principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits
2 pertaining to the released matters. In furtherance of such intention, the release hereby given shall be
3 and remain in effect as a full and complete release notwithstanding the discovery or existence of any
4 such additional or different claims or facts arising out of the released matters.

5 This Section 5 release shall not release any obligations created by or set forth in this
6 Agreement.

7 **5.2 JERGENS RELEASE OF DAVIA**

8 Jergens, on behalf of itself and its agents, representatives, attorneys, successors, and/or
9 assignees, hereby waives any and all claims against Davia and her attorneys and other
10 representatives, for any and all actions taken or statements made (or those that could have been taken
11 or made) by Davia and her attorneys and other representatives arising out of the subject matter of
12 the Notice and the Covered Products, whether in the course of investigating claims in this matter,
13 otherwise seeking to enforce Proposition 65 against Jergens and Releasees in this matter, or
14 negotiating this Agreement. Jergens acknowledges that it is familiar with Section 1542 of the
15 California Civil Code, which provides as follows:

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

23 Jergens expressly waives and relinquishes any and all rights and benefits which it may have
24 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code
25 as well as under any other state or federal statute or common law principle of similar effect, to the
26 fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters
27 identified in this Section 5.2. In furtherance of such intention, the release hereby given shall be and
28 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.

This Section 5 release shall not release any obligations created by or set forth in this

1 Agreement.

2 **6. SEVERABILITY**

3 If any of the provisions of this Agreement are found by a court to be unenforceable, the
4 validity of other provisions of this Agreement shall not be affected and shall remain in full force and
5 effect.

6 **7. COURT APPROVAL**

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

12 The Agreement shall become null and void if, for any reason, it is not approved and entered
13 by the Court, as it is executed, within one year after it has been fully executed by all Parties.

14 **8. GOVERNING LAW**

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

16 **9. NOTICES**

17 When any Party is entitled to receive any notice under this Agreement, the notice shall be sent
18 by FedEx (or other tracked delivery service) or electronic mail to the following:

19 **For Jergens:**

20
21 Jack Schron, President
22 Jergens, Inc.
23 15700 South Waterloo Road
24 Cleveland, Ohio 44110

25
26 Matthew Kaplan
27 Tucker Ellis LLP
28 515 South Flower Street, Forty Second Floor
Los Angeles, CA 90071
matthew.kaplan@tuckerellis.com

Service on Jergens shall not be deemed complete until the notice is served upon both
addresses set forth above.

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For Davia:

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

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

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

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

11. MODIFICATION

This Agreement may be modified only by written agreement of the Parties.

12. ADDITIONAL POST-EXECUTION ACTIVITIES

The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion is required to obtain judicial approval of this Agreement. In furtherance of obtaining such approval, the Parties and their respective counsel agree to mutually employ their best efforts to support the entry of this Agreement as a settlement agreement and obtain approval of the Agreement - sufficient to render an order approving this agreement - by the Court in a timely manner. Any effort to impede judicial approval of this Agreement shall subject such impeding party to liability for attorney fees and costs incurred by the party seeking approval of this Agreement.

13. ENTIRE AGREEMENT

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made or relied on by any Party hereto (other than the sales figures provided to Davia). No other agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing

1 by the Party to be bound. No waiver of any of the provisions of this Agreement shall be deemed or
2 shall constitute a waiver of any of the other provisions whether or not similar, nor shall such waiver
3 constitute a continuing waiver

4 **14. ATTORNEY'S FEES**

5 **14.1** In any dispute concerning any matter related to this Agreement, the prevailing Party
6 shall be entitled to recover its costs and expenses, including attorneys' fees and costs. Except as
7 otherwise specifically provided herein, each Party shall bear its own costs and attorney's fees in
8 connection with the Notice.

9 **15. NEUTRAL CONSTRUCTION**

10 Both Parties and their counsel have participated in the preparation of this Agreement and this
11 Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and
12 modification by the Parties and has been accepted and approved as to its final form by each of the
13 Parties. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be
14 interpreted against any Party as a result of the manner of the preparation of this Agreement. Each
15 Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are
16 to be resolved against the drafting Party should not be employed in the interpretation of this
17 Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654. The
18 Parties further agree that the section headings are for convenience only and shall not affect
19 interpretation of this Agreement.

20 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

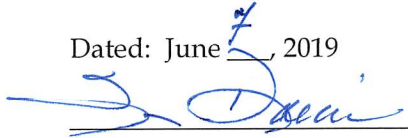
21 This Agreement may be executed in counterparts and by facsimile or portable document
22 format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall
23 constitute one and the same document. Signatures by scanned and e-mailed image or facsimile
24 transmission shall have the same force and effect as original signatures and as an electronic record
25 executed and adopted by a Party with the intent to sign the electronic record pursuant to Civil Code
26 §§ 1633.1 *et seq.*

27 **17. AUTHORIZATION**

28 Each of the persons signing this Agreement represents and warrants that he or she is

1 authorized and has the capacity to execute this Agreement on behalf of their respective Parties and
2 have read, understood, and agree to all of the terms and conditions of this Agreement.

3 **IT IS SO AGREED**

<p>4 Dated: June __, 2019</p> <p>5 _____</p> <p>6 Jack Schron, President 7 Jergens, Inc.</p>	<p>8 Dated: June 7, 2019</p> <p>9 </p> <p>10 Susan Davia</p>
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11 The undersigned counsel for Jergens expressly agrees to abide by the terms of Section 4.4 of this
12 Agreement.

13 Dated: June __, 2019

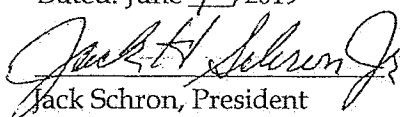
14 _____

15 Matthew Kaplan, Esq.
16 TUCKER ELLIS LLP
17 Attorneys for Jergens, Inc.

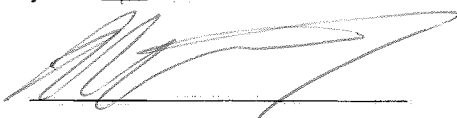
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1 authorized and has the capacity to execute this Agreement on behalf of their respective Parties and
2 have read, understood, and agree to all of the terms and conditions of this Agreement.

3 **IT IS SO AGREED**

4 5 Dated: June ^{7th} 2019 6  7 Jack Schron, President 8 Jergens, Inc.	Dated: June __, 2019 Susan Davia
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9 The undersigned counsel for Jergens expressly agrees to abide by the terms of Section 4.4 of this
10 Agreement.

11
12 Dated: June 7, 2019
13 
14
15 Matthew Kaplan, Esq.
16 TUCKER ELLIS LLP
17 Attorneys for Jergens, Inc.

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