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4 Attorneys for Plaintiff
SUSAN DAVIA
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 FOR THE COUNTY OF MARIN
10 UNLIMITED CIVIL JURISDICTION
11

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 JAPONESQUE, LLC, CVS HEALTH CORP.,
CVS PHARMACY, INC. and DOES 1-150,

16 Defendants.
17

Case No. CIV2200144

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

Action Filed: January 19, 2022
Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This consent to judgment settlement agreement (“Agreement” or “Settlement Agreement”) is
4 entered into by and between noticing party Susan Davia (“Davia”) and noticed party
5 Japonisque, LLC (“Japonisque”), with Davia and Japonisque each referred to as a “Party” and
6 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 Japonisque**

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

16 **1.4 General Allegations**

17 Davia alleges that Japonisque is responsible for the design, manufacture, distribution
18 and/or sale, in the State of California, of Beauty 360 brand Eyelash Curlers made with vinyl
19 components that exposed users to di-n-butyl phthalate (DBP) and diisononyl phthalate (“DINP”)
20 without first providing “clear and reasonable warning” under Proposition 65. Pursuant to
21 Proposition 65, DBP is listed as a reproductive toxin and DINP is listed as a carcinogen. DBP and
22 DINP shall be referred to hereinafter, collectively, as the “Listed Chemical.”

23 **1.5 Notice of Violation**

24 On December 10, 2020, Davia served CVS Pharmacy, Inc. (CVS), CVS Health Corp. and
25 various public enforcement agencies with a document entitled “60-Day Notice of Violation” that
26 provided public enforcers and the noticed entities with notice of alleged violations of Health &
27 Safety Code § 25249.6 for failing to warn consumers of the presence of DBP and DINP, toxic
28 chemicals found in the Covered Products (hereafter defined) sold in California (AG Notice 2020-

1 03366). This December 10, 2020, Notice of Violation to CVS shall hereafter be referred to as
2 "Notice 1." On February 12, 2021, Davia also served Japonese and various public enforcement
3 agencies with a document entitled "Supplemental 60-Day Notice of Violation" that provided
4 public enforcers and the noticed entities with notice of alleged violations of Health & Safety Code
5 § 25249.6 for failing to warn consumers of the presence of DBP and DINP toxic chemicals found in
6 the Covered Products sold in California (AG Notice 2021-00331). This February 12, 2021,
7 Supplemental Notice of Violation to Japonese shall hereafter be referred to as "Notice 2."

8 Davia and Japonese each represents that, as of the date it executes this Agreement, it is
9 not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action
10 related to DBP or DINP in the Covered Products (defined hereafter), as identified in Notice 1 or
11 Notice 2.

12 **1.6 No Admission**

13 This Agreement resolves claims that are denied and disputed by Japonese. The Parties
14 enter into this Agreement pursuant to a full and final settlement of any and all claims between the
15 Parties for the purpose of avoiding prolonged litigation. Japonese denies the material factual
16 and legal allegations contained in the Notice, maintains that it did not knowingly or intentionally
17 expose California consumers to the Listed Chemical through the reasonably foreseeable use of the
18 Covered Products and otherwise contends that, all Covered Products it has manufactured,
19 distributed and/or sold in California have been and are in compliance with all applicable laws
20 and regulations, including Proposition 65. Nothing in this Agreement shall be construed as an
21 admission by Japonese of any fact, finding, conclusion, issue of law, or violation of law, nor
22 shall compliance with this Agreement constitute or be construed as an admission by Japonese
23 of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by
24 Japonese. However, notwithstanding the foregoing, this section shall not diminish or otherwise
25 affect Japonese's obligations, responsibilities, and duties under this Agreement.

26 **1.7 Consent to Jurisdiction**

27 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
28 Court has jurisdiction over Japonese as to this Agreement, that venue for any action to enforce

1 this Agreement is proper in County of Marin, that this Agreement shall be construed as made
2 pursuant to Code of Civil Procedure Section 664.6 and the Marin County Superior Court shall be
3 considered to have jurisdiction to enforce the provisions of this Agreement until performance in
4 full of the terms of the settlement.

5 **2. DEFINITIONS**

6 **2.1** "Covered Product" shall mean all CVS Beauty 360 brand eyelash curlers made
7 with vinyl components, including but not limited to, CVS Beauty 360 Perfect Eyelash Curler
8 (050428328514).

9 **2.2** "Phthalate Free" Covered Products shall mean any accessible component of any
10 Covered Product contains less than or equal to 1,000 parts per million ("ppm") of DEHP, DINP,
11 DBP, di-isodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP") and butyl benzyl phthalate
12 ("BBP") as determined by a minimum of duplicate quality controlled test results using
13 Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C or equivalent
14 methodologies utilized by federal or state agencies to determine the presence and measure the
15 quantity of phthalates in solid substances.

16 **2.3** "California Customer" shall mean any customer located in California, any
17 customer with a California ship to address, any customer that operates a retail store in California
18 and any ecommerce customer that Japonisque reasonably understands sells to consumers in
19 California.

20 **2.4** "Effective Date" shall mean December 31, 2021.

21 **3. INJUNCTIVE-TYPE RELIEF**

22 **3.1 Products No Longer in Japonisque's Control**

23 Japonisque represents as a material term to this Agreement that on November 18, 2021, a
24 Covered Product recall order was submitted to all CVS California stores and all Covered Product
25 was thereafter pulled from California CVS store shelves. Based upon this representation,
26 Japonisque will have no further, formal obligation to notify CVS of the alleged violations or need
27 for recall of product warnings.

28

1 **3.2 Product Reformulation Commitment**

2 **3.2.1** Japonesque represents as a material term of this Agreement that the Covered
3 Products were reformulated as of September 7, 2020. To the extent it has not already done so, no
4 later than thirty (30) days after execution of this Agreement, Japonesque shall provide the
5 Phthalate Free concentration standards of Section 2.2 to its then-current vendors or manufacturers
6 of any Covered Product and instruct such entities not to incorporate any raw or component
7 materials that do not meet the Phthalate Free concentration standards of Section 2.2 into any
8 Covered Product or to supply any Covered Product to Japonesque that is not Phthalate Free.
9 Japonesque shall maintain copies of all vendor correspondence relating to the Phthalate Free
10 concentration standards for two years from the Effective Date and shall produce such copies to
11 Davia within fifteen (15) days of receipt of written request from Davia.

12 **3.2.2** After the Effective Date, Japonesque shall provide the Phthalate Free concentration
13 standards of Section 2.2 to any new vendors or manufacturers of any Covered Product and
14 instruct such entities not to incorporate any raw or component materials that do not meet the
15 Phthalate Free concentration standards of Section 2.2 into any Covered Product. Prior to purchase
16 and acquisition of any Covered Product or any vinyl component for any Covered Product from
17 any new vendor, Japonesque shall obtain a written confirmation and accompanying laboratory
18 test result from the new vendor demonstrating compliance with the Phthalate Free concentration
19 standard in all materials comprising the Covered Product. For every Covered Product
20 Japonesque manufactures, causes to be manufactured, orders, causes to be ordered or otherwise
21 obtains from a new vendor after the Effective Date, Japonesque shall maintain copies of all testing
22 of such products demonstrating compliance with this section, shall maintain copies of all vendor
23 correspondence relating to the Phthalate Free concentration standards for two (2) years from the
24 Effective Date and shall produce such copies to Davia within fifteen (15) business days of receipt
25 of written request from Davia. For every Covered Product Japonesque contends meets the
26 Phthalate Free concentration standards and intends to offer for sale to any California Customer
27 without a warning pursuant to Section 3.3 below, Japonesque shall maintain copies of all vendor
28 correspondence relating to the Phthalate Free concentration standards for two (2) years from the

1 Effective Date and shall produce such copies to Davia within fifteen (15) business days of receipt
2 of written request from Davia.


3 **3.2.3** As of September 15, 2021, Japonisque shall not manufacture or cause to be
4 manufactured any Covered Product unless such Covered Product meets the Phthalate Free
5 concentration standards of this Agreement.

6 **3.3 Interim Covered Product Warnings**


7 For any inventory of Covered Products obtained by Japonisque prior to the Effective Date
8 that is not confirmed to be Phthalate Free, Japonisque shall not distribute, sell or ship, or cause to
9 be distributed, sold or shipped, any such Covered Product to a California Customer unless such
10 Covered Product is shipped with product package label as set forth hereafter.

11 Each such warning utilized by Japonisque for any Covered Product shall be prominently
12 placed either on the product, its labeling or its packaging with such conspicuousness as compared
13 with other words, statements, designs, or devices as to render it likely to be read and understood
14 by an ordinary individual under customary conditions *before* purchase or use.

15 Each warning shall either be printed directly on the Covered Product consumer packaging
16 or shall be affixed to the consumer packaging. Each warning shall include the yellow triangle
17 with an internal exclamation point and state:

18
19  **WARNING** [The vinyl materials of] this product can expose
20 you to chemicals, including DBP and DINP, that
21 are known to the State of California to cause
22 cancer and birth defects or other reproductive
23 harm. For more information go to
24 www.P65Warnings.ca.gov.

23 or

24  **WARNING** Cancer and Reproductive Harm. -
25 www.P65Warnings.ca.gov

26 **3.4 Internet Ecommerce Covered Product Warnings**

27 Japonisque hereby verifies that they do not sell any Covered Product directly to
28 consumers through any ecommerce website. As such, Japonisque shall have no obligation to

1 provide warnings for any Covered Product on any website owned, operated or controlled by
2 Japonisque.

3 **4. MONETARY PAYMENTS**

4 **4.1 Civil Penalty**

5 As a condition of settlement of all the claims referred to in this Settlement Agreement,
6 Japonisque shall pay a total of \$4,400 in civil penalties in accordance with California Health &
7 Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of
8 Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty
9 remitted to Davia.

10 **4.2 Augmentation of Penalty Payments**

11 For purposes of the penalty assessment under this Agreement, Davia is relying entirely
12 upon Japonisque for accurate, good faith reporting to Davia of the nature and amounts of
13 relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and
14 presents evidence to counsel for Japonisque that the Covered Products have been distributed in
15 California in sales volumes materially different than those identified by Japonisque prior to
16 execution of this Agreement, and Japonisque does not provide Davia with competent and
17 credible evidence to dispute this claim, then Japonisque shall be liable for an additional penalty
18 amount of \$10,000.00. Davia agrees to provide counsel for Japonisque with a written demand for
19 all such additional penalties and attorney fees under this Section. After service of such demand,
20 Japonisque shall have thirty (30) days to either present evidence to counter this claim or to agree
21 to the amount of fees and penalties owing by Japonisque and submit such payment to Davia in
22 accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4.
23 Should this thirty (30) day period pass without any such resolution between the parties and
24 payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim
25 for the additional civil penalties pursuant to this Section and the prevailing party to such action
26 shall be entitled to all reasonable attorney fees and costs relating to such claim.

27 **4.3 Reimbursement of Davia’s Fees and Costs**

28 The Parties acknowledge that Davia and her counsel offered to resolve this dispute

1 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
2 this fee issue to be resolved after the material terms of the agreement had been settled.
3 Japonisque expressed a desire to resolve the fee and cost issue shortly after the other settlement
4 terms had been finalized. The Parties then attempted to (and did) reach an accord on the
5 compensation due to Davia and her counsel under general contract principles and the private
6 attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all
7 work performed in this matter, except fees that may be incurred on appeal. Under these legal
8 principles, Japonisque shall pay Davia's counsel the amount of \$40,500 for fees and costs incurred
9 investigating, litigating and enforcing this matter.

10 **4.4 Payment Procedures**

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

19 a civil penalty check payable to "OEHHA" (Memo line "Prop 65 Penalties, 2021-00331"), in
20 the amount of \$3,300;

21 a civil penalty check payable to "Susan Davia" (Memo line "Prop 65 Penalties, 2021-00331")
22 in the amount of \$1,100; and

23 an attorney fee and cost reimbursement check payable to "Sheffer Law Firm" (Memo line
24 "2021-00331") in the amount of \$40,500.

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

27 Sheffer Law Firm
28 Attn: Proposition 65 Controller

1 232 E. Blithedale Avenue, Suite 210
2 Mill Valley, CA 94941

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

6 Sheffer Law Firm
7 Attn: Proposition 65 Controller
8 232 E. Blithedale Avenue, Suite 210
9 Mill Valley, CA 94941

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

13 **4.5 Issuance of 1099 Forms**

14 After this Agreement has been executed and the settlement funds have been transmitted to
15 Davia's counsel, Japonesque shall issue three separate 1099 forms, as follows:

- 16 (a) issued to the Office of Environmental Health Hazard Assessment, P.O. Box
17 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to
18 Sections 4.1 and 4.2;
- 19 (b) issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2, whose
20 address and tax identification number shall be furnished upon request; and
- 21 (c) issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid
22 pursuant to Section 4.2 and 4.3.

23 **5. RELEASES**

24 **5.1 Davia's Release Of Japonesque, Releasees And Downstream Releasees**

25 5.1.1 This settlement agreement is a full, final and binding resolution between
26 Davia and Japonesque of any violation of Proposition 65 that was or could have been asserted by
27 Davia, individually and on behalf of herself and her past and current representatives, agents,
28 attorneys, successors and/or assigns ("Releasers") against Japonesque, LLC and each of its
directors, officers, shareholders, manager, members, employees, insurers, attorneys, agents,
parents, subsidiaries, affiliates, successors and assigns ("Releasees"), and all entities to whom

1 they directly or indirectly distribute or sell Covered Products, including but not limited to
2 manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees, retailers,
3 franchisees, and cooperative members including CVS, and each of its directors, officers
4 employees, attorneys, agents, parents, and subsidiaries (“Downstream Releasees”), of all claims
5 for violations of Proposition 65 based on alleged exposure to DINP and DBP contained in the
6 Covered Products that were manufactured, distributed, sold or offered for sale to a California
7 Customer before the Effective Date. Compliance with the terms of this Agreement constitutes
8 compliance with Proposition 65 by Japonisque with regard to the alleged or actual failure to warn
9 about exposure to DINP and DBP from Covered Products manufactured, sold or distributed for
10 sale after the Effective Date. Within five (5) calendar days of Davia’s receipt of the payments set
11 forth in sections 4.1, 4.3 and 4.4, Davia shall file a request for dismissal with prejudice in the action
12 as to CVS and CVS Health Corp.

13 5.1.2 In further consideration of the promises and agreements herein contained,
14 and for so long as Japonisque remains in compliance with the terms of this Agreement, Davia on
15 behalf of herself, her past and current representatives, agents, attorneys, successors and/or
16 assigns hereby waives all Davia’s rights to institute or participate in, directly or indirectly, any
17 form of legal action and releases all claims that Davia may have, including, without limitation, all
18 actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages,
19 costs, fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert
20 fees, and attorneys’ fees, limited to and arising under Proposition 65 with respect to the Covered
21 Products manufactured, distributed, sold and/or offered for sale by Japonisque before the
22 Effective Date (collectively “claims”), against Japonisque, Releasees, and the Downstream
23 Releasees.

24 5.1.3 Davia also, in her individual capacity and on behalf of her past and current
25 representatives, agents, attorneys, successors and/or assigns, provides a general release herein
26 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
27 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and
28 demands of Davia, of any nature, character or kind, known or unknown, suspected or

1 unsuspected, arising out of the subject matter of the Notice 1 and Notice 2 as to Covered Products
2 manufactured, distributed or sold by Japonisque, Releasees, or the Downstream Releasees before
3 the Effective Date. Davia acknowledges that she is familiar with section 1542 of the California
4 civil code, which provides as follows:

5
6 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
7 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
8 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
9 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
10 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR
11 OR RELEASED PARTY.

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

21 5.1.4 This section 5.1 release shall not extend upstream to any entities, other than
22 Japonisque, that manufactured the Covered Products or any component parts thereof, or any
23 distributors or suppliers who sold the covered products or any component parts thereof to
24 Japonisque .

25 **5.2 Japonisque's Release of Davia**

26 The Release by Davia is mutual. Japonisque on behalf of itself, its past and current agents,
27 representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against
28 Davia and her attorneys and other representatives, for any and all actions taken or statements
made (or those that could have been taken or made) by Davia and her attorneys and other
representatives, whether in the course of investigating claims, otherwise seeking to enforce
Proposition 65 against it in this matter, or with respect to the Covered Products. Japonisque

1 acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as
2 follows:

3
4 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
5 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
6 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
7 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
8 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
9 DEBTOR OR RELEASING PARTY.

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

17 **6. ENFORCEMENT**

18 Prior to bringing any motion, order to show cause, or other proceeding to enforce
19 Proposition 65 or any terms of this Agreement relating to the alleged sale in California by
20 Japonesque or CVS of any Covered Product without a warning and which is alleged to not be
21 Phthalate Free, in actual or alleged violation of this Agreement, Davia shall provide a Notice of
22 Violation ("NOV") to Japonesque. The NOV shall include, for each Covered Product alleged to
23 be violation of this Agreement: the date of alleged violations(s), place of sale, date and proof of
24 purchase (if relevant), and test reports obtained by Davia or her counsel regarding each such
25 Covered Product. Davia shall take no further action regarding any alleged violation nor seek
26 any monetary recovery for herself, her agents or her counsel if, within 30 days of receiving such
27 NOV, Japonesque demonstrates (1) that the Covered Product was manufactured distributed,
28 sold or offered for sale by Japonesque before the Effective Date; or (2) that Japonesque directed
the retailer or distributor of the Covered Product to take corrective action by placing an
appropriate warning on the Covered Product(s) sold or offered for sale in California compliant

1 with Section 3.3 of this Agreement following service of the NOV; or (3) that the Covered
2 Products are Phthalate Free.

3 **7. COURT APPROVAL**

4 This Agreement is effective upon execution but must also be approved by the Court. If the
5 Court does not approve this Agreement in its entirety, the Parties shall meet and confer to
6 determine whether to modify the terms of the Agreement and to resubmit it for approval. In
7 meeting and conferring, the Parties agree to negotiate in good faith to reach agreement on any
8 actions reasonably necessary to amend and/or modify this Agreement in order to further the
9 mutual intention of the Parties in entering into this Agreement. The Agreement shall become null
10 and void if, for any reason, it is not approved and entered by the Court, as it is executed, within one
11 year after it has been fully executed by all Parties. The Parties agree that, upon Court approval, a
12 Court judgment shall be entered on the terms of this Agreement.

13 **8. SEVERABILITY**

14 If any of the provisions of this Agreement are found by a court to be unenforceable, the
15 validity of the enforceable provisions remaining, after express agreement of the Parties, shall not
16 be adversely affected, unless the Court finds that any unenforceable provision is not severable
17 from the remainder of the Agreement.

18 **9. GOVERNING LAW**

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

20 **10. NOTICES**

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

23 For Japonisque :

24 Simon Worraker, CEO
25 Japonisque, LLC
26 2420 Camino Ramon, Suite 250
San Ramon, CA 94583

27 With a copy to its counsel:

28 Christopher J. Olson, Esq.

1 Sweeney Mason LLP
2 983 University Avenue, Suite 104C
3 Los Gatos, CA 95032-7637
4 colson@smwb.com

5 For Davia to:

6 Proposition 65 Coordinator
7 Sheffer Law Firm
8 232 E. Blithedale Ave., Suite 210
9 Mill Valley, CA 94941

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

12 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

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

15 **12. MODIFICATION**

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

17 **13. ENTIRE AGREEMENT**

18 This Agreement contains the sole and entire agreement and understanding of the Parties
19 with respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
20 commitments, and understandings related hereto. No representations, oral or otherwise, express
21 or implied, other than those contained herein have been made by any Party hereto. No other
22 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to
23 bind any of the Parties. No supplementation, modification, waiver, or termination of this
24 Agreement shall be binding unless executed in writing by the Party to be bound. No waiver of
25 any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the
26 other provisions whether or not similar, nor shall such waiver constitute a continuing waiver

27 **14. ATTORNEY'S FEES**

28 **14.1** Should either Party prevail on any motion, application for order to show cause
or other proceeding to enforce a violation of this Agreement, that Party shall be entitled to its
reasonable attorney fees and costs incurred as a result of such motion, order or application,

1 consistent with C.C.P. §§ 1021 and 1021.5.

2 **14.2** Except as otherwise specifically provided herein, each Party shall bear its own
3 costs and attorney's fees in connection with the Notice 1 or Notice 2.

4 **15. NEUTRAL CONSTRUCTION**

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

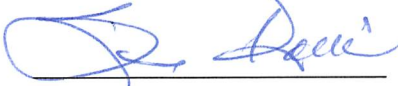
14 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

18 **17. AUTHORIZATION**

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

21 **IT IS SO AGREED**

<p>22</p> <p>23 Dated: ^{JWD/EL} May __, 2022</p> <p>24 </p> <p>25 _____ Susan Davia</p>	<p>23 Dated: May __, 2022</p> <p>24 _____</p> <p>25 Simon Worraker, CEO Japonesque, LLC</p>
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27
28

1 consistent with C.C.P. §§ 1021 and 1021.5.

2 14.2 Except as otherwise specifically provided herein, each Party shall bear its own
3 costs and attorney's fees in connection with the Notice 1 or Notice 2.

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11 providing that ambiguities are to be resolved against the drafting Party should not be employed
12 in the interpretation of this Agreement and, in this regard, the Parties hereby waive California
13 Civil Code Section 1654.

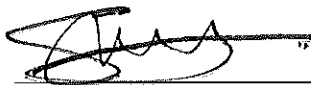
14 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

18 **17. AUTHORIZATION**

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

21 **IT IS SO AGREED**

<p>22 Dated: May __, 2022</p> <p>23</p> <p>24 _____</p> <p>25 Susan Davia</p> <p>26</p>	<p>22 Dated: May 31st, 2022</p> <p>23</p> <p>24 </p> <p>25 _____</p> <p>26 Simon Worraker, CEO</p> <p>27 Japonesque, LLC</p> <p>28</p>
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