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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 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 GREAT NUMBER ONE, LLC, IT'SUGAR, LLC
15 and DOES 1-150,

16 Defendants.

Case No. CIV 2202590

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

Action Filed: August 17, 2022

Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This consent to judgment settlement agreement (“Agreement” or “Settlement Agreement”)
4 is entered into by and between plaintiff Susan Davia (“Davia”) and defendant Great Number One,
5 LLC (“GNO” or “Defendant”), with Davia and GNO each referred to as a “Party” and collectively
6 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 GNO**

12 GNO is a Limited Liability Company which conducted business in California that is subject
13 to this matter. For purposes of this Agreement only, GNO does not contest that it is a person in
14 the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act
15 of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

16 **1.4 General Allegations**

17 Davia alleges that GNO is responsible for the manufacture, distribution and/or sale of
18 novelty pillow products with vinyl pouch windows (“Covered Products”) that are alleged to
19 expose users to diisononyl phthalate (“DINP”) without first providing “clear and reasonable
20 warning” under Proposition 65. Pursuant to Proposition 65, DINP is listed as a carcinogen. DINP
21 shall be referred to hereinafter as the “Listed Chemical.”

22 **1.5 Notice of Violation**

23 On May 16, 2022, Davia served GNO and defendant It’Sugar, LLC and various public
24 enforcement agencies with a document entitled “60-Day Notice of Violation” that provided public
25 enforcers and the noticed entities with notice of alleged violations of Health & Safety Code §
26 25249.6 for failing to warn consumers of the presence of DINP found in Covered Products sold in
California (AG Notice 2022-00968). This May 16, 2022, Notice of Violation shall hereafter be
referred to as “Notice.” The Parties represent that, as of the date of execution of this Agreement,

1 they are not aware of any public enforcer that is diligently prosecuting a Proposition 65
2 enforcement action related to DINP in the Covered Products as identified in the Notice.

3 **1.6 Complaint**

4 On August 17, 2022, Davia filed a Complaint in the Superior Court of the State of California
5 for the County of Marin, Case No. CIV2202590, against GNO and It'Sugar, LLC, alleging violations
6 by defendants of Health and Safety Code § 25249.6 based on the alleged exposures to DINP in the
7 subject Covered Products (the "Action").

8 **1.7 No Admission**

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

24 **1.8 Consent to Jurisdiction**

25 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
26 Court has jurisdiction over GNO as to this Agreement, that venue for any action to enforce this
Agreement is proper in County of Marin, that this Agreement shall be construed as made pursuant
to Code of Civil Procedure Section 664.6 and the Marin County Superior Court shall be considered

1 to have jurisdiction to enforce the provisions of this Agreement until performance in full of the
2 terms of the settlement.

3 **2. DEFINITIONS**

4 **2.1** "Covered Products" shall mean all novelty pillow products with vinyl pouch
5 windows distributed by GNO to any California Customer, including, but not limited to, Nerds
6 Package Pillow (Strawberry 7 Lime, 8 10037 82184 0, ITS10741).

7 **2.2** "Phthalate Free" Covered Products shall mean any accessible component of any
8 Covered Product contains less than or equal to 1,000 parts per million ("ppm") of id(2-
9 ethylhexyl)phthalate ("DEHP"), DINP, di-n-butyl phthalate ("DBP"), di-isodecyl phthalate
10 ("DIDP"), di-n-hexyl phthalate ("DnHP") and butyl benzyl phthalate ("BBP") as determined by a
11 minimum of duplicate quality controlled test results using Environmental Protection Agency
12 ("EPA") testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal
13 or state agencies to determine the presence and measure the quantity of phthalates in solid
14 substances.

15 **2.3** "California Customer" means any direct customer of GNO with a California ship
16 to or billing address or any retail customer who GNO reasonably believes sells Covered Products
17 in or into California.

18 **2.4** "Effective Date" shall mean August 1, 2024.

19 **3. INJUNCTIVE-TYPE RELIEF**

20 **3.1 Products No Longer in GNO's Control**

21 No later than the Effective Date, GNO shall send a letter, electronic or otherwise
22 ("Notification Letter") to the manager for any entity to which GNO has distributed or sold
23 Covered Products since May 16, 2021, and which entity GNO reasonably believes continues to
24 maintain any inventory of Covered Products. The Notification Letter shall advise the recipient
25 that Covered Products "have been tested for the presence of phthalates and found to contain
26 DINP, a chemical known to the State of California to cause cancer," and request that the recipient
either pull all Covered Products from retail or ecommerce store displays and return its entire
inventory of Covered Products to GNO or label the Covered Products remaining in inventory for

1 sale in or to California with a label that complies with Section 3.3. The Notification Letter shall
2 request a response from the recipient within 15 days, confirming that the letter was received.
3 GNO shall maintain records of all correspondence or other communications generated pursuant to
4 this Section for two years after the Effective Date and shall promptly produce copies of such
5 records upon Davia's written request.

6 **3.2 Product Reformulation Commitment**

7 **3.2.1** No later than the Effective Date, GNO shall provide the Phthalate Free
8 concentration standards of Section 2.2 to their then-current vendors or manufacturers of any
9 Covered Products and instruct such entities not to incorporate any raw or component materials
10 that do not meet the Phthalate Free concentration standards of Section 2.2 into any Covered
11 Products or to supply any Covered Products to GNO that is not Phthalate Free. For a period of
12 two years after the Effective Date, GNO shall maintain copies of all vendor correspondence
13 relating to the Phthalate Free concentration standards and shall produce such copies to Davia
14 within fifteen (15) days of receipt of written request from Davia, which request may be made no
15 more than one time per calendar year.

16 **3.2.2** For a period of one year after the Effective Date, GNO shall provide the Phthalate
17 Free concentration standards of Section 2.2 to any new vendors or manufacturers of any Covered
18 Products and instruct such entities not to incorporate any raw or component materials that do not
19 meet the Phthalate Free concentration standards of Section 2.2 into any Covered Products. For a
20 period of one year after the Effective Date, Prior to purchase and acquisition of any Covered
21 Products from any new vendor, for a period of one year after the Effective Date, GNO shall obtain
22 a written confirmation and accompanying laboratory test result from the new vendor
23 demonstrating compliance with the Phthalate Free concentration standard in all materials
24 comprising the Covered Product. For every Covered Product GNO manufactures, causes to be
25 manufactured, orders, causes to be ordered or otherwise obtains from a new vendor after the
26 Effective Date, such entity shall maintain copies of all testing of such products demonstrating
compliance with this section, shall maintain copies of all vendor correspondence relating to the
Phthalate Free concentration standards for two (2) years from the Effective Date and shall produce

1 such copies to Davia within fifteen (15) business days of receipt of written request from Davia,
2 which request may be made no more than one time per calendar year.


3 **3.2.3** As of May 1, 2024, GNO shall not manufacture, cause to be manufactured, purchase
4 or otherwise obtain any Covered Products unless such Covered Product meets the Phthalate Free
5 concentration standards of this Agreement.

6 **3.3 Interim Covered Product Warnings**


7 **3.3.1** For any inventory of Covered Products obtained by GNO prior to May 1, 2024, that
8 is not confirmed to be Phthalate Free and contains only phthalate DINP, GNO shall not distribute,
9 sell or ship, or cause to be distributed, sold or shipped, any such Covered Products to a California
10 Customer unless such Covered Products are shipped with product package label as set forth
11 hereafter.

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

16 Each warning shall either be printed directly on the Covered Products, consumer
17 packaging or shall be affixed to the consumer packaging. Each warning shall include the yellow
18 triangle, unless the package does not including the color yellow in which the warning symbol may
19 be in black and white, with an internal exclamation point and state:

20  **WARNING:** The vinyl materials of this product can
21 expose you to [chemicals including] diisononyl phthalate
22 (DINP), which is [are] known to the State of California to
23 cause cancer. For more information go to
24 www.P65Warnings.ca.gov.

25 or

26  **WARNING:** Cancer - www.P65Warnings.ca.gov

Where a label used to provide a warning under this section includes consumer information
in a language other than English, the warning in this section must also be provided in that
language in addition to English.

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3.4 Internet Ecommerce Covered Product Warnings

A warning must be given in conjunction with the sale, or offer of sale, by GNO of any Covered Products not confirmed by GNO to be Phthalate Free via any ecommerce website owned, operated, managed or controlled by, or for the direct benefit of, GNO. A warning will satisfy this requirement if it appears either: (a) on the same web page on which a Covered Products are displayed; (b) on the same web page as the order form for a Covered Products; (c) on the same page as the price for any Covered Products; or (d) on one or more web pages displayed to a purchaser during the checkout process. One of the following warning statements shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Covered Products for which it is given, or through a hyperlink using the word “WARNING”, in the same type size or larger than the Covered Product description text:

⚠WARNING: This product can expose you to [chemicals including] diisononyl phthalate (DINP), which is [are] known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

15 Alternatively, the following “short form” warning may be used on the ecommerce website, but only
16 if the same warning language also appears on the product label or consumer packaging of the
17 Covered Products.

⚠WARNING: Cancer - www.P65Warnings.ca.gov.

19 Where an ecommerce product description includes consumer information in a language
20 other than English, the warning in this section must also be provided in that language in addition to
21 English.

22 **3.5** If Davia alleges that any Covered Product fails to comply with Section 3 of this Consent
23 Judgment, then Davia shall inform GNO in writing in a reasonably prompt manner, including
24 information sufficient to permit GNO to identify the Covered Product(s) at issue and third-party
25 test reports. GNO shall, within thirty (30) days following such notice, provide Davia with
26 information including, if applicable, third-party test reports demonstrating GNO’s compliance

1 with the Consent Judgment. Davia agrees not to take any further action if GNO provides
2 information demonstrating GNO's compliance, and the matter shall be deemed resolved.

3 **3.5 Sell-Through Period**

4 Notwithstanding anything else in this Consent Judgment, Covered Products that are
5 manufactured, packaged, or put into commerce before the Effective Date shall be subject to the
6 release of liability pursuant to this Consent Judgment, without regard to when such Covered
7 Products were, or are in the future, distributed or sold to customers.

8 **4. MONETARY PAYMENTS**

9 **4.1 Civil Penalty**

10 As a condition of settlement of all the claims referred to in this agreement, GNO shall pay a
11 total of \$2,600 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1)
12 & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
13 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Davia.

14 **4.2 Augmentation of Penalty Payments**

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

1 prevailing party to such action shall be entitled to all reasonable attorney fees and costs relating to
2 such claim.

3 **4.3 Reimbursement of Davia's Fees and Costs**

4 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
5 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
6 issue to be resolved after the material terms of the agreement had been settled. The Parties then
7 attempted to (and did) reach an accord on the compensation due to Davia and her counsel under
8 general contract principles and the private attorney general doctrine codified at California Code of
9 Civil Procedure section 1021.5, for all work performed in this matter, except fees that may be
10 incurred on appeal. Under these legal principles, GNO shall pay Davia's counsel the amount of
\$33,000 for fees and costs incurred investigating, litigating and enforcing this matter.

11 **4.4 Payment Procedures**

12 Within seven (7) days of the date plaintiff provides electronic mail notice to counsel for
13 Defendants that the Court has approved this settlement, GNO, or its counsel shall deliver part of
14 the settlement payments to Plaintiff's counsel as follows:

15 a civil penalty check payable to "OEHHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties,
16 2022-00968"), in the amount of \$1,950;

17 a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65
18 Penalties, 2022-00968") in the amount of \$650;

19 an attorney fee and cost reimbursement check payable to "Sheffer Law Firm" (EIN 55-08-
20 58910, Memo line "2022-00968") in the amount of \$16,500.

21 Within thirty-seven (37) days of the date plaintiff provides electronic mail notice to counsel
22 for Defendants that the Court has approved this settlement, GNO, or its counsel shall deliver the
remainder of the settlement payments to Plaintiff's counsel as follows:

23 an attorney fee and cost reimbursement check payable to "Sheffer Law Firm" (EIN 55-08-
24 58910, Memo line "2022-00968") in the amount of \$16,500.

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:

1 Sheffer Law Firm
2 Attn: Proposition 65 Controller
232 E. Blithedale Avenue, Suite 210
3 Mill Valley, CA 94941

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

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

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

13 While the obligations of this agreement are binding upon execution, the Release of GNO
14 shall not become effective until after all monetary payments have been made by GNO and all
15 funds have cleared.

16 **4.5 Issuance of 1099 Forms**

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

19 (a) issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010,
20 Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Sections 4.1 and
21 4.2;

22 (b) issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2, whose address and
23 tax identification number shall be furnished upon request; and

24 (c) issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to
25 Section 4.2 and 4.3.

26 **5. RELEASES**

5.1 DAVIA'S RELEASE OF GNO

5.1.1 Plaintiff acting on her own behalf and in the public interest releases GNO and each
of its directors, officers, employees, attorneys, agents, parents, and subsidiaries ("Releasees") from

1 all claims for violations of Proposition 65 up through the Effective Date based on exposure to
2 DINP from the Covered Products as set forth in the Notice of Violation. Compliance with the
3 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
4 exposures to DINP from Covered Products as set forth in the Notice of Violations.

5 **5.1.2** In exchange for the monetary and other consideration set forth herein, Davia also,
6 in her individual capacity and on behalf of her past and current representatives, agents, attorneys,
7 successors and/or assigns, provides a general release herein which shall be effective as a full and
8 final accord and satisfaction, as a bar to all actions, causes of action, obligations, other costs,
9 expenses and attorneys' fees, damages, losses, claims, liabilities and demands of Davia, of any
10 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject
11 matter of the Notice as to Covered Products manufactured, distributed or sold by GNO before the
12 Effective Date. Davia acknowledges that she is familiar with section 1542 of the California civil
code, which provides as follows:

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

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

25 This section 5.1 release shall not extend upstream to any entities, other than IT'SUGAR,
26 that manufactured the Covered Products or any component parts thereof, or any other distributors

1 or suppliers who sold the covered products or any component parts thereof to IT'SUGAR.

2 **5.2 GNO's Release of Davia**

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

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

17 GNO expressly waives and relinquishes any and all rights and benefits which it may have under,
18 or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as
19 well as under any other state or federal statute or common law principle of similar effect, to the
20 fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters.

21 In furtherance of such intention, the release hereby given shall be and remain in effect as a full
22 and complete release notwithstanding the discovery or existence of any such additional or
23 different claims or facts arising out of the released matters.

24 **6. COURT APPROVAL**

25 This Judgment is effective upon execution but must also be approved by the Court. If the
26 Court does not approve this Judgment in its entirety, the Parties shall meet and confer to
determine whether to modify the terms of the Judgment and to resubmit it for approval. In
meeting and conferring, the Parties agree to negotiate in good faith to reach agreement on any
actions reasonably necessary to amend and/or modify this Judgment in order to further the
mutual intention of the Parties in entering into this Judgment. The Judgment shall become null

1 and void if, for any reason, it is not approved and entered by the Court, as it is executed, within
2 one year after it has been fully executed by all Parties. The Parties agree that, upon Court
3 approval, a Court judgment shall be entered on the terms of this Judgment.

4 **7. SEVERABILITY**

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

9 **8. GOVERNING LAW**

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

11 **9. NOTICES**

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

14 For GNO:

15 Kim Sandell (SB# 252321)
16 Kim.Sandell@ThompsonHine.com
17 Thompson Hine LLP

18 For Davia to:

19 Proposition 65 Coordinator
20 SHEFFER LAW FIRM
21 232 E. Blithedale Ave., Suite 210
22 Mill Valley, CA 94941
23 gregs@sheffer-law.net

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

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

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

11. MODIFICATION

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

1 **12. ENTIRE AGREEMENT**

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

11 **13. ATTORNEY’S FEES**

12 **13.1** Should either Party prevail on any motion, application for order to show cause or
13 other proceeding to enforce a violation of this Agreement, including a failure to timely deliver
14 consideration under this Agreement, that Party shall be entitled to its reasonable attorney fees and
15 costs incurred as a result of such motion, order or application, consistent with C.C.P. §§ 1021 and
16 1021.5.

17 **13.2** Except as otherwise specifically provided herein, each Party shall bear its own
18 costs and attorney’s fees in connection with the Notice.

19 **13.3** Nothing in this Section shall preclude a Party from seeking an award of sanctions
20 pursuant to law.

21 **14. NEUTRAL CONSTRUCTION**

22 Both Parties and their counsel have participated in the preparation of this Agreement and
23 this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to
24 revision and modification by the Parties and has been accepted and approved as to its final form
25 by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this
26 Agreement shall not be interpreted against any Party as a result of the manner of the preparation
of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction
providing that ambiguities are to be resolved against the drafting Party should not be employed in

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the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.

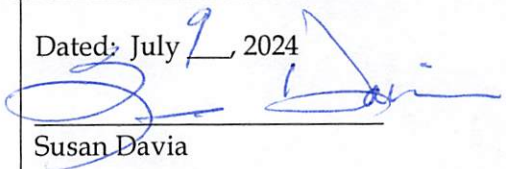
15. COUNTERPARTS, FACSIMILE SIGNATURES

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

16. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: July __, 2024</p> <hr/> <p>Ken Faustine Great Number One, LLC</p>	<p>Dated: July 9, 2024</p>  <hr/> <p>Susan Davia</p>
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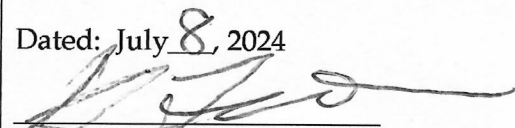
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16. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: July 8, 2024</p>  <hr/> <p>Ken Faustine Great Number One, LLC</p>	<p>Dated: July __, 2024</p> <hr/> <p>Susan Davia</p>
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