1 2	Jonathan A. Bornstein, State Bar No. 196345 Josh Voorhees, State Bar No. 241436 THE CHANLER GROUP	
2	2560 Ninth Street Parker Plaza, Suite 214	
4	Berkeley, CA 94710-2565 Telephone: (510) 848-8880	
5	Facsimile: (510) 848-8118	
6	Attorneys for Plaintiff LAURENCE VINOCUR	
7		
8		F THE STATE OF CALIFORNIA
9	COUNT	Y OF ALAMEDA
10	UNLIMITED	CIVIL JURISDICTION
11) Case No. RG14741719
12	LAURENCE VINOCUR,)) [PROPOSED] CONSENT JUDGMENT AS
13	Plaintiff,) TO DEFENDANT A.D. SUTTON & SONS,) INC.
14	V.) INC.
15	A.D. SUTTON & SONS, INC.; and DOES 1-150, inclusive,)
16)
17	Defendants.)
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	[PROPOSED] CONSENT JUDGMENT	AS TO DEFENDANT A.D. SUTTON & SONS, INC.

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1.

INTRODUCTION

1.1 Laurence Vinocur, and AD Sutton & Sons, Inc.

This Consent Judgment is entered into by and between plaintiff Laurence Vinocur ("Vinocur" or "Plaintiff") and defendant A.D. Sutton & Sons, Inc. ("ADS&S" or "Defendant"), with Vinocur and ADS&S collectively referred to as the "Parties."

1.2 Laurence Vinocur.

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

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1.3 AD Sutton & Sons, Inc.

Vinocur alleges that ADS&S employs ten or more persons and is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, *et seq.* ("Proposition 65").

14

1.4 General Allegations.

Vinocur alleges that ADS&S has manufactured, imported, distributed and/or sold backpacks
with vinyl/PVC components with di(2-ethylhexyl)phthalate ("DEHP") for use in the State of
California without the requisite Proposition 65 warnings. DEHP is listed pursuant to Proposition 65
as a chemical known to the State of California to cause reproductive harm.

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1.5 Notice of Violation.

Vinocur served ADS&S and various public enforcement agencies with a document entitled
"60-Day Notice of Violation", dated July 11, 2014, alleging that ADS&S violated Proposition 65 by
failing to warn consumers that backpacks with vinyl/PVC components including, but not limited to,
the *Backpack, Style 4154, RN 93551*, exposed users in California to DEHP ("Notice"). To the best
of the parties' knowledge, no public enforcer has prosecuted the allegations set forth in the Notice.

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1.6 Complaint.

On September 23, 2014, Vinocur filed a complaint in the Superior Court in and for the
County of Alameda against ADS&S and Does 1 through 150, *Vinocur v. AD Sutton & Sons, Inc., et al.*, Case No. RG14741719 ("Complaint" or "Action"), alleging violations of California Health &

Safety Code § 25249.6, based on the alleged unwarned exposures to DEHP contained in certain backpacks with vinyl/PVC components sold by ADS&S in the State of California.

1.7 No Admission.

4 The Parties enter into this Consent Judgment as a full and final settlement of all claims that 5 were raised in either the Notice or Complaint, or that could have been raised in the Notice or Complaint, arising out of the facts or conduct alleged therein. ADS&S denies the material, factual 6 7 and legal allegations contained in the Notice and the Complaint, and maintains that it is not a person subject to Proposition 65 and that all of the products it has manufactured, imported, distributed 8 9 and/or sold in the State of California, including the Covered Products, as defined in Section 2.1 10 below, have been, and are, in compliance with all laws. ADS&S does not admit any facts or 11 conclusions of law including, but not limited to, any facts or conclusions of law suggesting or 12 demonstrating any violations of Proposition 65 or any other statutory, common law or equitable 13 requirements relating to DEHP in Covered Products, such being specifically denied by ADS&S. 14 Nothing in this Consent Judgment shall be construed as an admission by ADS&S of any fact, 15 conclusion of law, issue of law or violation of law, nor shall compliance with this Consent Judgment 16 constitute or be construed as an admission by ADS&S of any fact, conclusion of law, issue of law, or 17 violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right, 18 remedy, argument or defense ADS&S may have in this or any other future legal proceedings. This 19 Consent Judgment is the product of negotiation and compromise and is accepted by ADS&S for 20 purposes of settling, compromising, and resolving issues disputed in this action. However, this 21 Section shall not diminish or otherwise affect the obligations, responsibilities and duties of ADS&S 22 under this Consent Judgment.

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1.8 Consent to Jurisdiction.

For purposes of this Consent Judgment only, ADS&S stipulates that this Court has jurisdiction over ADS&S as to the allegations contained in the Complaint, that venue is proper in the County of Alameda and that this Court has jurisdiction to enter and enforce the provisions of this Consent Judgment.

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DEFINITIONS

2.1 "Covered Product[s]" means backpacks with vinyl/PVC components containing DEHP, including, but not limited to, *Backpack, Style 4154, RN 93551*, which are manufactured, imported, sold and/or distributed for sale in California by ADS&S.

2.2 "Additional Product[s]" means backpacks with vinyl/PVC components containing
butyl benzyl phthalate ("BBP") and/or di-n-butyl phthalate ("DBP"), which are manufactured,
imported, sold and/or distributed for sale in California by ADS&S.

8 2.3 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date
9 that this Consent Judgment is entered by the Court.

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INJUNCTIVE RELIEF: PRODUCT REFORMULATION

Reformulation Commitment and Standards.

12 By July 31, 2015, so long as the Consent Judgment is entered by the Court, Covered Products 13 and Additional Products ADS&S manufactures in California shall either: a) contain less than or 14 equal to 1,000 parts per million ("ppm") each of DEHP, DBP, and BBP, when analyzed pursuant to 15 EPA testing methodologies 3580A and 8270C, or equivalent methodologies utilized by federal or 16 state agencies for the purpose of determining DEHP, DBP and BBP content in a solid substance 17 ("Reformulated Products"); or b) have a compliant Proposition 65 warning for the Covered Products 18 and Additional Products as provided for in section 3.2, below. By Allowing ADS&S until July 31, 19 2015, Vinocur accepts ADS&S's written representation that the company began the process of 20 applying the following warning to its Covered Products after receiving the Notice, which reads: "this product contains chemicals known to the State of California to cause cancer, and birth defects, or 21 22 other reproductive harm" (hereinafter, "interim warnings").

23

3.2 Sales of Existing Inventory or Additional Products with Warnings.

Nothing in this Consent Judgment shall preclude ADS&S from fulfilling customer orders,
shipping, and/or selling in California its existing inventory of Covered Products. Any Covered
Products received by ADS&S prior to the Effective Date that ADS&S knows or has reason to
believe do not qualify as Reformulated Products, and that ADS&S sells or offers for sale in

California, may be sold thereafter so long as ADS&S has begun the process of adding compliant Proposition 65 warnings to such Covered Products.

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3.3 **Reformulated Products are Deemed to Comply.**

Reformulated Products shall be deemed to comply with Proposition 65 as it relates to the presence of DEHP, BBP, or DBP in the Covered Products and Additional Products and shall be exempt from any Proposition 65 warning requirements regarding exposure to DEHP, BBP, and DBP.

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4.

MONETARY PAYMENTS

9 In settlement of all the claims referred to in this Consent Judgment, ADS&S has been 10 assessed a total of \$20,000 in civil penalties in accordance with this Section. Each penalty payment will be allocated in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 12 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment 13 ("OEHHA") and the remaining 25% of the penalty remitted to Vinocur, as set forth in sections 4.1 and 4.2 below. 14

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4.1 Initial Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b).

16 Within five (5) business days of mutual execution of this Consent Judgment, ADS&S shall 17 issue a check payable to "Hunton & Williams Client Trust Account". Hunton & Williams shall 18 provide The Chanler Group with written confirmation within five (5) days of receipt of the funds 19 described below in this paragraph that the funds have been deposited in the Hunton & Williams trust 20 account. Within five (5) calendar days of the date this Consent Judgment is entered by the Court, 21 Hunton & Williams shall issue a check for the initial civil penalty payment to "The Chanler Group 22 in Trust for Laurence Vinocur" in the amount of \$4,500, in accordance with Section 4.4 below. 23 Thereafter, the Chanler Group shall timely forward 75% of the initial civil penalty (\$3,375) to 24 OEHHA and provide a copy of the check to ADS&S' counsel.

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4.2 Final Civil Penalty Pursuant to Health & Safety Code §25249.7(b).

26 ADS&S shall pay a final civil penalty in the amount \$15,500 on or before August 15, 2015. 27 However, the final civil penalty shall be waived in its entirety, if, on or before August 1, 2015, an 28 Officer of ADS&S certifies in writing that it has advised its suppliers of this agreement and that it

1 has obtained a written certification from its suppliers that the Covered Products meet the definition 2 of Reformulated Products established by this Consent Judgment or that it has discontinued selling 3 the Covered Products and Additional Products in California. ADS&S shall maintain any supplier 4 certification obtained pursuant to this Section for at least three years from the Effective Date. 5 ADS&S's certification must be received by The Chanler Group on or before August 1, 2015. The certification in lieu of paying the final civil penalty provided by this Section is a material term, and 6 7 time is of the essence. Unless waived, ADS&S shall issue a check for its final civil penalty payment to "The Chanler Group in Trust for Laurence Vinocur", in the amount of \$15,500, on August 15, 8 9 2015. Thereafter, the Chanler Group shall timely forward 75% of the final civil penalty (\$11,625) 10 to OEHHA and provide a copy of the check to ADS&S' counsel.

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4.3 Reimbursement of Plaintiff's Fees and Costs.

12 The Parties reached an accord on the compensation due to Vinocur and his counsel under 13 general contract principles and the private attorney general doctrine codified at California Code of 14 Civil Procedure section 1021.5, for all work performed through the mutual execution of this 15 agreement, including the fees and costs incurred as a result of investigating, bringing this matter to ADS&S's attention, negotiating a settlement in the public interest, and obtaining court approval of 16 17 the same. Under these legal principles, ADS&S shall pay the amount of \$32,000 to reimburse 18 Plaintiff's fees and costs incurred investigating, litigating and enforcing this matter, including the 19 fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's 20 approval of this Consent Judgment in the public interest. Within five (5) business days of mutual 21 execution of this Consent Judgment, ADS&S shall issue a check payable to "Hunton & Williams 22 Client Trust Account" in the amount of \$32,000.00 to be held in trust by Hunton & Williams for The 23 Chanler Group. Hunton & Williams shall provide The Chanler Group with written confirmation 24 within five (5) days of receipt that the funds have been deposited in the Hunton & Williams trust 25 account. Within five (5) calendar days of the date this Consent Judgment is entered by the Court, 26 Hunton & Williams shall issue a check for \$32,000 payable to "The Chanler Group" and shall be 27 delivered to the address in Section 4.4 below.

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4.4 **Payment Procedures**

All payments owed by ADS&S to Vinocur and his counsel pursuant to this agreement, shall be delivered to the following payment address:

> The Chanler Group Attn: Proposition 65 Controller 2560 Ninth Street Parker Plaza, Suite 214 Berkeley, CA 94710

If for any reason this Consent Judgment is not entered by the Court within nine (9) months of its complete execution by the parties, Plaintiff shall meet and confer with ADS&S about mutually agreeable steps the parties can take so as to seek entry of the Consent Judgment. If such steps cannot be agreed to between the Parties, Plaintiff shall promptly return to ADS&S any and all monies paid by ADS&S herein under Sections 4.1, 4.2 (if not waived) and 4.3 to Vinocur and The Chanler Group upon ADS&S's written request.

5.

CLAIMS COVERED AND RELEASED

5.1 Vinocur's Release of ADS&S.

In consideration of the promises and agreements contained herein and for the payments to be made pursuant to Section 4, above, Vinocur, acting on behalf of himself, his past and current agents, representatives, attorneys, successors, and/or assignees, and in the interest of the general public pursuant to Health & Safety Code § 25249.7(d), hereby releases ADS&S, its parents, subsidiaries, affiliated entities that are under common ownership, directors, officers, employees, attorneys, shareholders ("Defendant Releasees"), and all of its downstream distributors, wholesalers, customers, retailers (including, but not limited to, the Burlington Coat Factory Warehouse Corporation), franchisees, cooperative members, licensors, licensees, and any other person or entity to whom they directly or indirectly distribute or sell Covered Products ("Downstream Defendant Releasees"), from any and all claims, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and attorneys' fees) of any nature whatsoever, fixed or contingent (collectively "Claims") related to any alleged or actual 28

violation of Proposition 65 that has been or could have been asserted by Vinocur in the public
 interest in his Notice and Complaint regarding the alleged failure to warn about exposure to DEHP
 in Covered Products manufactured, distributed, or sold by ADS&S prior to July 31, 2015 and hereby
 waives all rights to institute or participate in, directly or indirectly, any such Claims, against
 ADS&S, Defendant Releasees, and Downstream Defendant Releasees.

6

5.2 Vinocur's Waiver of Section 1542.

7 Vinocur also, in his individual capacity only and *not* in his representative capacity, provides a general release herein to ADS&S, Defendant Releasees, and Downstream Defendant Releasees 8 9 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of 10 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands 11 of Vinocur of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of alleged exposure to, or failure to warn of, DEHP, DBP and BBP under Proposition 65 with 12 13 respect to the Covered Products and Additional Products manufactured, distributed or sold by July 31, 2015, so long as the Consent Judgment is entered by the Court. Vinocur acknowledges that he is 14 15 familiar with Section 1542 of the California Civil Code, which provides as follows: 16 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN 17 BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER 18 SETTLEMENT WITH THE DEBTOR. 19 Vinocur, in his individual capacity only and *not* in his representative capacity, expressly

waives and relinquishes any and all rights and benefits which he may have under, or which may be

21 conferred on his by the provisions of Section 1542 of the California Civil Code as well as under any

22 || other state or federal statute or common law principle of similar effect, to the fullest extent that he

23 || may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such

24 intention, the release hereby given shall be and remain in effect as a full and complete release

notwithstanding the discovery or existence of any such additional or different claims or facts arising
out of the released matters.

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The Parties further understand and agree that this release shall not extend upstream to any entities who sold the Covered Products or Additional Products or any component parts thereof to ADS&S.

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5.3 ADS&S's Release and Waiver.

ADS&S waives any and all Claims against Vinocur, his attorneys, and his representatives for any and all actions taken or statements made (or those that could have been taken or made) by Vinocur and his attorneys and his representatives, whether in the course of investigating claims or otherwise seeking enforcement of Proposition 65 against them in this matter, and/or with respect to the Covered Products and Additional Products.

ADS&S also provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of ADS&S of any nature, character or kind, known or unknown, suspected or unsuspected, related to exposure to DEHP, BBP and DBP in the Covered Products and Additional Products manufactured, distributed, or sold by ADS&S by the Effective Date, so long as the Consent Judgment is entered by the Court, ADS&S acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

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

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COURT APPROVAL

6.1 Waiver of Trial.

By this Consent Judgment and upon its approval, the Parties waive their right to a trial on the merits, and waive their rights to initiate appellate review of this Consent Judgment, and of any and all interim rulings, including all pleading, procedural, and discovery orders.

6.2 Court Approval Required.

7 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7, a noticed motion is required to obtain judicial approval of this Consent Judgment, which Vinocur shall 8 file and which ADS&S shall support as reasonably necessary. The Parties agree to mutually employ 9 10 their and their respective counsel's best efforts to support the entry of this agreement as a Consent 11 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. If this 12 Consent Judgment is not approved by the Court within nine months of complete execution by the 13 parties, then: (a) this Consent Judgment and any and all prior agreements between the Parties shall 14 terminate and become null and void, and the action shall revert to the status that existed prior to the 15 execution date of this Consent Judgment; (b) no term of this Consent Judgment or any draft thereof, 16 or of the negotiation, documentation, or other part or aspect of the Parties' settlement discussions, 17 shall have any effect, nor shall any such matter be admissible in evidence for any purpose in this 18 action, or in any other proceeding; and (c) the Parties agree to meet and confer to determine whether 19 to modify the terms of the Consent Judgment and to resubmit it for approval.

20 21 7.

MISCELLANEOUS

7.1 Governing Law.

The terms of this Consent Judgment shall be governed by the laws of the State of California, and shall apply only to Covered Products and Additional Products offered for sale in the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products and Additional Products, then ADS&S may provide written notice to Vinocur of any asserted change in the law, and shall have no further obligations pursuant to this Consent Judgment with respect to, and to the extent that, the Covered Products or Additional Products are so affected.

Contract Interpretation. 7.2

4 Ju 5 ap	udgment and this Consent Judgment is the result of the joint efforts of the Parties. This Consent udgment was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment		
5 ar	pproved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or mbiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of		
	mbiguity existing in this Consent Judgment shall not be interpreted against any Party as a result of		
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0 a	he manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment		
7 th	the manner of the preparation of this Consent Judgment. Each Party to this Consent Judgment		
8 ag	agrees that any statute or rule of construction providing that ambiguities are to be resolved against		
9 th	the drafting Party should not be employed in the interpretation of this Consent Judgment and, in this		
10 re	regard, the Parties hereby waive California Civil Code § 1654.		
11 8.	8. NOTICES		
12	Unless specified herein, all correspondence and notices required to be provided pursuant to		
13 th	his Consent Judgment shall be in writing and personally delivered or sent by: (i) first-class,		
14 (r	registered or certified mail) return receipt requested; or (ii) overnight courier on any Party by the		
15 of	other Party at the following addresses:		
16	To ADS&S:		
17	Malcolm C. Weiss, Esq. Hunton & Williams LLP		
18	550 South Hope Street, Suite 2000 Los Angeles, CA 90071		
19			
20	To Vinocur:		
21	Proposition 65 Coordinator The Chanler Group		
22	2560 Ninth Street Parker Plaza, Suite 214		
23	Berkeley, CA 94710-2565		
24	Any Party, from time to time, may specify in writing to the other Party a change of address to		
	which all notices and other communications shall be sent.		
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	[PROPOSED] CONSENT JUDGMENT AS TO DEFENDANT A.D. SUTTON & SONS, INC.		

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MODIFICATION

9.1 Modification.

This Consent Judgment may be modified by written agreement of the Parties and upon entry of a modified Consent Judgment by the court, or by motion of any Party and entry of a modified Consent Judgment by the court.

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9.2 Subsequent Legislation.

7 If, subsequent to the Effective Date, legislation or regulation is adopted that addresses the
8 DEHP content of Covered Products sold in California hereunder, any Party shall be entitled to
9 request that the Court modify the reformulation standard in Section 3.1 of this Consent Judgment for
10 good cause shown, to the extent that the new level provided by the CPSIA allows for a different
11 amount of DEHP in children's toys.

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9.3 Notice; Meet and Confer.

Any Party seeking to modify this Consent Judgment or to allege a violation thereof shall first
attempt in good faith to meet and confer with the other Party for a period of 30 days prior to filing a
motion to modify the Consent Judgment.

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10. ENTIRE AGREEMENT

17 This Consent Judgment contains the sole and entire agreement and understanding of the 18 Parties with respect to the entire subject matter hereof, and any and all prior discussions, 19 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein. No 20 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding 21 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions of 22 this Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions 23 hereof whether or not similar, nor shall such waiver constitute a continuing waiver unless set forth in writing between the Parties. 24

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11. RETENTION OF JURISDICTION

This Court shall retain jurisdiction of this matter to implement or modify the Consent
Judgment and shall retain jurisdiction to enforce this Consent Judgment, or any provision thereof,
under C.C.P. § 664.6.

[PROPOSED] CONSENT JUDGMENT AS TO DEFENDANT A.D. SUTTON & SONS, INC.

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COUNTERPARTS; FACSIMILE SIGNATURES

This Consent Judgment 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.

AUTHORIZATION

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

10	AGREED TO:	AGREED TO:
11	(\mathcal{A})	
12	LAURENCE VINOCUR	A.D. SUTTON & SONS, INC.
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14	Dated: _Febuary 13, 2015	(Print Name)
15		By:(Print Name) Its:(Title)
16		Dated:
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	[PROPOSED] CONSENT JUDGMENT AS TO	O DEFENDANT A.D. SUTTON & SONS, INC.

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12. **COUNTERPARTS; FACSIMILE SIGNATURES**

This Consent Judgment may be executed in counterparts and by facsimile or portable 2 3 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. 4

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AUTHORIZATION

6 The undersigned are authorized to execute this Consent Judgment on behalf of their 7 respective Parties and have read, understood, and agree to all of the terms and conditions of this 8 Consent Judgment.

10	AGREED TO:	AGREED TO:	
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