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4 Attorneys for Plaintiff
5 SUSAN DAVIA

FILED

MAY 30 2018

**JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: E. Chais, Deputy**

6
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA
8 FOR THE COUNTY OF MARIN
9 UNLIMITED CIVIL JURISDICTION
10

11
12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 LONDON LUXURY LLC, BED BATH &
16 BEYOND, INC. and DOES 1-150,

17 Defendants.
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Case No. CIV1601962

**JUDGMENT ON PROPOSITION 65
SETTLEMENT**

Case Filed: June 3, 2016

Trail Date: None Assigned

1 In the above-entitled action, Plaintiff Susan Davia and Defendants London Luxury, LLC and
2 Bed Bath & Beyond, Inc., having agreed through their respective counsel that a judgment be
3 entered pursuant to the terms of the Settlement Agreement entered into by the parties in resolution
4 of this Proposition 65 action, and following the issuance of an order approving the Parties'
5 Settlement Agreement on this day, IT IS HEREBY ORDERED, ADJUDGED AND DECREED that
6 pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is
7 hereby entered in accordance with the terms of the Consent to Judgment attached hereto as Exhibit
8 A. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under
9 Code of Civil Procedure § 664.6.

10 IT IS SO ORDERED.

11 Dated: MAY 30 2018

ROY O. CHERNUS

Honorable Roy O. Chernus
Judge Of The Superior Court

EXHIBIT A

1 Gregory M. Sheffer, State Bar No. 173124
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5 SUSAN DAVIA

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

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11 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 LONDON LUXURY, LLC, BED BATH &
BEYOND, INC. and DOES 1-150,

15 Defendants.
16

Case No. CIV 1601962

**SETTLEMENT AGREEMENT AND
CONSENT TO JUDGMENT AS TO
DEFENDANTS LONDON LUXURY, LLC
AND BED BATH & BEYOND, INC.**

Action Filed: June 3, 2016
Trial Date: None Assigned

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1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This settlement agreement and consent to judgment ("Agreement" or "Settlement
4 Agreement") is entered into by and between plaintiff Susan Davia ("Davia") and defendants
5 London Luxury LLC ("London Luxury") and Bed Bath & Beyond, Inc. ("Bed Bath") (collectively
6 "Settling Defendants") with Davia, London Luxury and Bed Bath collectively referred to as the
7 "Parties."

8 **1.2 Plaintiff Susan Davia**

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

12 **1.3 London Luxury LLC**

13 London Luxury LLC is a person in the course of doing business for purposes of the Safe
14 Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et*
15 *seq.* ("Proposition 65").

16 **1.4 Bed Bath & Beyond, Inc.**

17 Bed Bath & Beyond, Inc. is a person in the course of doing business for purposes of
18 Proposition 65.

19 **1.5 General Allegations**

20 Davia alleges that both London Luxury and Bed Bath participated in the manufacture (or
21 other acquisition), distribution and/or sale, in the State of California, of certain PVC pillow storage
22 cases that exposed users to di(2-ethylhexyl)phthalate ("DEHP") without first providing any "clear
23 and reasonable warning" under Proposition 65. DEHP is listed as a reproductive toxin pursuant to
24 Proposition 65. DEHP shall hereinafter be referred to as the "Listed Chemical."
25

26 **1.6 Notices of Violations**

27 On March 22, 2016, Davia served London Luxury LLC, Bed Bath & Beyond, Inc. and various
28 public enforcement agencies with a document entitled "60-Day Notice of Violation" that provided



1 public enforcers and the noticed entities with notice of alleged violations of Health & Safety Code §
2 25249.6 for failing to warn consumers of the presence of DEHP, a toxic chemical found in certain
3 products sold in California. London Luxury LLC and Bed Bath & Beyond, Inc. both received the
4 March 22, 2016, 60-Day Notice of Violation.

5 On February 28, 2017, Davia served London Luxury LLC, Bed Bath & Beyond, and various
6 public enforcement agencies with a document entitled Supplemental 60-Day Notice of Violation
7 that provided public enforcers and the noticed entities with notice of alleged violations of Health &
8 Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP, a toxic chemical
9 found in certain products sold in California.

10 Each Party represents that, as of the date it executes this Agreement, it is not aware of any
11 public enforcer that is diligently prosecuting a Proposition 65 enforcement action related to DEHP
12 in the Covered Products, as identified in the 60-Day Notice.

13 1.7 Complaint

14 On June 3, 2016, Davia, acting in the interest of the general public in California, filed a
15 Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV
16 1601962, alleging violations by London Luxury, Bed Bath and Does 1-150 of Health & Safety
17 Code § 25249.6 based, *inter alia*, on the alleged exposures to DEHP contained in certain PVC
18 pillow storage case products.

19 As part of, and upon execution of, this Agreement, the Parties stipulate and agree that the
20 Complaint shall and will be amended to include the Parties, recitals, and allegations against
21 London Luxury and Bed Bath of Davia's claims relating to the Listed Chemicals in the PVC
22 storage/packaging cases identified in the Supplemental 60-Day Notice, and that such First
23 Amended Complaint ("FAC") will be filed with the Court.

24 The Parties agree that this FAC shall be presented for approval to the Court as part of and in
25 conjunction with the motion to approve this Agreement. London Luxury and Bed Bath agree that
26 inclusion of the FAC in the motion to approve settlement and approve the FAC shall be deemed
27 service of the FAC on London Luxury and Bed Bath, which service is accepted by them. London
28 Luxury and Bed Bath stipulate to waive any further response to such FAC, stipulate that the FAC

1 shall be deemed at issue as to each such defendant upon approval of the settlement and stipulate that
2 London Luxury's and Bed Bath's initial Answer shall also constitute their response to the FAC.
3 (hereafter "Complaint" or "Action").

4 **1.8 No Admission**

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

19 **1.9 Consent to Jurisdiction**

20 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
21 Court has jurisdiction over London Luxury and Bed Bath as to the allegations in the 60-Day Notice
22 received from Davia, and this Agreement, that venue is proper in County of Marin, and that the
23 Marin County Superior Court has jurisdiction to enforce the provisions of this Agreement.

24 **2. DEFINITIONS**

25 **2.1** The term "Products" or "Covered Products" shall mean vinyl/PVC
26 storage/packaging cases for Claritin branded pillow, comforter and comforter protector products,
27 including all sizes of Claritin Down and Anti-Allergen Clearloft back/stomach and side sleeper,
28

Mt KOB

1 children and adult pillows, comforters and comforter protectors, manufactured, distributed or
2 offered for sale by London Luxury, LLC to any California Customer.

3 **2.2** The term "Phthalate Free" Covered Products shall mean, for every component of
4 any Covered Product, containing less than or equal to 1,000 parts per million ("ppm") of DEHP,
5 DBP, DINP, DIDP, DnHP and BBP as determined by a minimum of duplicate quality controlled test
6 results achieved by an accredited U.S. laboratory using Environmental Protection Agency ("EPA")
7 testing methodologies 3580A and 8270C, or equivalent methodologies utilized by Federal or State
8 agencies for the purpose of determining the phthalate content in a solid substance.

9 **2.3** "California Customer" shall mean any customer with a California ship to address,
10 a California warehouse, a California retail outlet or any customer that London Luxury reasonably
11 understands sells to consumers in California.

12 **2.4** "Effective Date" shall mean March 15, 2018.

13 **3. INJUNCTIVE RELIEF**

14 **3.1 Products No Longer in London Luxury' Control**

15 No later than the Effective Date, London Luxury LLC shall send a letter, electronic or
16 otherwise ("Notification Letter") to (1) its primary legal contact at Bed Bath & Beyond, Inc., (2) any
17 retail customer to which it sells or otherwise distributes Covered Products in California and (3) any
18 retail customer that London Luxury LLC reasonably understands or believes had any inventory, for
19 resale in California, of Covered Products as of July 1, 2017. The Notification Letter shall advise the
20 recipient that the "Claritin Down and Down Alternative pillow, comforter and comforter cover
21 storage/packaging cases (including pillows for back/stomach and side sleeper, children and adult
22 pillows of all sizes and comforters/comforter covers of all sizes) shipped prior to November 30,
23 2016 contain DEHP, a chemical known to the State of California to cause birth defects or other
24 reproductive harm," and request that the recipient either: (a) label the Covered Products remaining
25 in inventory for sale in California, or to California Customers, pursuant to Section 3.3(a)(i); (b)
26 return all units of the Covered Product to London Luxury for distribution or sale outside of
27 California or (c) place a sign in each section where any Covered Product is sold, of dimensions no
28 less than 5" x 9" complying with 27 Cal. Code Regs., Section 25603 (as then applicable) or



1 specifically stating "WARNING: Some remaining inventory of Claritin Down and Down
2 Alternative pillow, comforter and comforter cover storage/packaging cases contain DEHP, a
3 chemical known to the State of California to cause cancer and birth defects or other reproductive
4 harm." This signage shall remain in place until all store inventory of Covered Products is Phthalate
5 Free. The Notification Letter shall require a response from the recipient within 15 days, confirming
6 whether the Covered Products will be labeled, returned, or if signage will be posted. London
7 Luxury shall maintain records of all correspondence or other communications generated pursuant
8 to this section for two years after the Effective Date and shall promptly produce copies of such
9 records upon Davia's written request.

10 3.2 Product Reformulation Commitment

11 To the extent it has not already been completed, no later than the Effective Date, London
12 Luxury shall provide the Phthalate Free concentration standards of Section 2.2 to the manufacturer
13 or vendors of any Covered Product and instruct each such entity not to incorporate any raw or
14 component materials that do not meet the Phthalate Free concentration standards of Section 2.2 into
15 any Covered Product. London Luxury shall maintain copies of all vendor correspondence relating
16 to the Phthalate concentration standards and shall produce such copies to Davia within fifteen (15)
17 days of receipt of written request from Davia. London Luxury shall maintain records of all vendor
18 correspondence generated pursuant to this section for two years after the Effective Date.

19 3.2.1 At any time after the Effective Date, London Luxury shall provide the Phthalate Free
20 concentration standards of Section 2.2 to any new manufacturer or vendor of any Covered Product
21 and instruct such manufacturer or vendor not to incorporate any raw or component materials that
22 do not meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product.
23 Prior to manufacture of any Covered Product, London Luxury shall obtain a written confirmation
24 and accompanying laboratory test result from the new manufacturer of any Covered Product
25 demonstrating compliance with the Phthalate Free concentration standard for each such product.
26 Prior to purchase or other acquisition of any Covered Product from any new manufacturer or
27 vendor, London Luxury shall obtain a written confirmation and accompanying laboratory test
28

1 result from the new vendor demonstrating compliance with the Phthalate Free concentration
2 standard in all materials comprising the Covered Product and a post-production sample of Covered
3 Product. For every Covered Product London Luxury manufactures, causes to be manufactured,
4 orders, causes to be ordered or otherwise obtains from a new vendor after the Effective Date,
5 London Luxury shall maintain copies of all testing of such products demonstrating compliance
6 with this section, shall maintain copies of all vendor correspondence relating to the Phthalate Free
7 concentration standards and shall produce such copies to Davia within fifteen (15) days of receipt
8 of written request from Davia. London Luxury shall maintain records generated pursuant to this
9 section for two years after the Effective Date.

10 **3.3** As of November 15, 2017, London Luxury shall not distribute or cause to be
11 distributed to any California Customer any Covered Product that is not Phthalate Free.

12 **3.4 London Luxury Product Warnings for Existing Inventory**

13 As a material term of this Agreement, London Luxury represents that as of December 1,
14 2016, it has only sold or shipped reformulated Covered Products to California. To the extent
15 London Luxury has any remaining inventory of Covered Products that are not Phthalate-Free,
16 London Luxury shall not sell any such non-Phthalate Free Covered Product to Bed Bath & Beyond,
17 Inc. or any California Customer, unless such Covered Products are sold or shipped with one of the
18 clear and reasonable warnings set forth hereafter.

19 Each warning shall be prominently placed on the customer facing front of the Covered
20 Product with such conspicuousness as compared with other words, statements, designs, or devices
21 as to render it likely to be read and understood by an ordinary individual under customary
22 conditions *before* purchase or use. Each warning shall be provided in a manner such that the
23 consumer or user understands to which *specific* Covered Product the warning applies, so as to
24 minimize the risk of consumer confusion.

25 (a) **California Distribution.**

26 (i) **Product Labeling.** For all Covered Products sold to any entity that
27 London Luxury reasonably understands either maintains retail outlets in California or is a
28

1 distributor for any entity that maintains retail outlets in the California, London Luxury shall affix a
2 warning to the labeling or consumer packaging of the Covered Product that states:

3 **WARNING:** This product contains DEHP, a chemical known to
4 the State of California to cause cancer and birth
5 defects or other reproductive harm. Please wash
6 hands after handling.

7 (b) **Catalog and Internet Sales.** For all Covered Products sold or offered for sale
8 by London Luxury via catalog or the Internet to customers located in the United States any such
9 catalog or Internet site offering any Covered Product for sale shall include a warning in the catalog
10 or within the website, identifying the specific Covered Product to which the warning applies, as
11 specified in Sections 3.2(b)(i) and (ii) below.

12 (i) **Mail Order Catalog Warning.** Any warning provided in a mail order
13 catalog must be in the same type size or larger than the Covered Product description text within the
14 catalog. The following warning shall be provided on the same page and in the same location as the
15 display and/or description of the Covered Product:

16 **WARNING:** This product contains DEHP, a chemical known to
17 the State of California to cause cancer and birth
18 defects or other reproductive harm.

19 Where it is impracticable to provide the warning on the same page and in the same location
20 as the display and/or description of the Covered Product, London Luxury may utilize a designated
21 symbol to cross reference the applicable warning and shall define the term "designated symbol"
22 with the following language on the inside of the front or back cover of the catalog or on the same
23 page as any order form for the Old Covered Product(s):

24 **WARNING:** Certain products identified with this symbol ▼
25 contain DEHP, a chemical known to the State of
26 California to cause birth defects or other
27 reproductive harm.

28 The designated symbol must appear on the same page and in close proximity to the display
and/or description of the Covered Product. On each page where the designated symbol appears,
London Luxury must provide a header or footer directing the consumer to the warning language
and definition of the designated symbol.

7 *[Handwritten signature]*

1 If London Luxury elects to provide warnings in any mail order catalog, then the warnings
2 must be included in all catalogs offering to sell one or more Covered Products printed after the
3 Effective Date.

4 (ii) **Internet Website Warning.** A warning must be given in conjunction
5 with the sale, or offer of sale, of any Covered Products by London Luxury via the Internet,
6 provided it appears either: (a) on the same web page on which a Covered Product is displayed; (b)
7 on the same web page as the order form for a Covered Product; (c) on the same page as the price for
8 any Covered Product; or (d) on one or more web pages displayed to a purchaser during the
9 checkout process. The following warning statement shall be used and shall appear in any of the
10 above instances adjacent to or immediately following the display, description, or price of the
11 Covered Product for which it is given in the same type size or larger than the Covered Product
12 description text:

13 **WARNING:** This product contains DEHP, a chemical known to
14 the State of California to cause birth defects or
15 other reproductive harm. Please wash hands after
handling.

16 Alternatively, the designated symbol may appear adjacent to or immediately following the
17 display, description, or price of the Covered Product for which a warning is being given, provided
18 that the following warning statement also appears elsewhere on the same web page, as follows:

19 **WARNING:** Products identified on this page with the following
20 symbol ▼ contain DEHP, a chemical known to the
21 State of California to cause cancer and birth defects
22 or other reproductive harm. Please wash hands
after handling.

23 After the January 31, 2018, London Luxury shall not distribute or otherwise sell any
24 Covered Product to a California Customer that is not Phthalate Free regardless of whether a
25 Proposition 65 warning accompanies the product.

26 3.5 Bed Bath Retail Outlets

27 3.5.1 As of March 15, 2018, Bed Bath shall not knowingly sell any Covered
28 Product in a California retail store unless it is either confirmed by London Luxury to be

1 Phthalate Free, is labelled with a Proposition 65 warning compliant with the requirements of
2 Section 3.3(a)(i) of this Agreement or the store has placed warning signs in the section where
3 Covered Products are displayed with language either compliant with Section 3.1(c) of this
4 Agreement or with 27 Cal. Code Regs., Section 25603 (as then applicable).

5 **3.5.2** As of March 15, 2018, Bed Bath shall not knowingly sell any Covered
6 Product to a California Customer through any affiliated ecommerce or internet website unless
7 such Covered Product is confirmed by London Luxury to be Phthalate Free or the ecommerce or
8 internet website contains language compliant with Section 3.3 (b)(ii) of this Agreement or the
9 Covered Product is labelled with a Proposition 65 warning compliant with the requirements of
10 Section 3.3(a)(i) of this Agreement or with the following warning language: "Attention
11 California Residents: California law requires that California residents be advised of the
12 following: Proposition 65 Warning: The products listed below contain chemicals known to the
13 State of California to cause cancer, birth defects or other reproductive harm. This warning
14 pertains to [covered products]."

15 **4. MONETARY PAYMENTS**

16 **4.1 Civil Penalty**

17 As a condition of settlement of all the claims referred to in this Agreement, London Luxury
18 shall pay a total of \$9,000 in civil penalties in accordance with California Health & Safety Code §
19 25249.12(c)(1) & (d).

20 **4.2 Augmentation of Penalty Payments**

21 For purposes of the penalty assessment under this Agreement, Davia is relying entirely
22 upon London Luxury and its counsel for accurate, good faith reporting to Davia of the nature and
23 amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers
24 and presents to London Luxury evidence that the Covered Products have been distributed by
25 London Luxury in sales volumes materially different than those identified by London Luxury prior
26 to execution of this Agreement, then London Luxury shall be liable for an additional penalty
27 amount of up to \$10,000.00. London Luxury shall also be liable for any reasonable, additional
28 attorney fees expended by Davia in discovering such additional retailers or sales of up to \$10,000.

9 

1 Davia agrees to provide London Luxury with a written demand for all such additional penalties
2 and attorney fees under this Section. After service of such demand, London Luxury shall have
3 thirty (30) days to agree to the amount of fees and penalties owing by London Luxury and submit
4 such payment to Davia in accordance with the method of payment of penalties and fees identified
5 in Section 4.1 and 4.4. Should this thirty (30) day period pass without any such resolution between
6 the parties and payment of such additional penalties and fees, Davia shall be entitled to file a
7 formal legal claim for additional civil penalties pursuant to this section and shall be entitled to all
8 reasonable attorney fees and costs relating to such claim.

9 **4.3 Reimbursement of Davia's Fees and Costs**

10 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
11 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
12 issue to be resolved after the material terms of the agreement had been settled. London Luxury
13 then expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had
14 been finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
15 Davia and her counsel under general contract principles and the private attorney general doctrine
16 codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter..
17 Under these legal principles, London Luxury shall pay the amount of \$59,000 for fees and costs
18 incurred investigating, litigating and enforcing this matter, including the fees and costs incurred
19 (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval of this Agreement
20 in the public interest.

21 **4.4 Payment Procedures**

22 London Luxury shall deliver all settlement payment funds required by this Agreement to its
23 counsel within one week of the date that this Agreement is fully executed by the Parties. London
24 Luxury's counsel shall confirm receipt of settlement funds in writing to plaintiff's counsel and,
25 thereafter, hold the amounts paid in trust until such time as the Court approves this settlement
26 contemplated by Section 7.

27 Within five business days of the date the Court approves the settlement, London Luxury's
28 counsel shall deliver the settlement payments it has held in trust to plaintiff's counsel as follows:

10  The page number '10' is printed above a handwritten signature and initials in blue ink.

- 1 1. a civil penalty check payable to "OEHHA" (Memo line "Prop. 65 Penalties, 2016-
2 00204"), in the amount of \$6,750;
- 3 2. a civil penalty check payable to "Susan Davia" (Memo line "Prop. 65 Penalties, 2016-
4 00204") in the amount of \$2,250; and
- 5 3. a check payable to "Sheffer Law Firm" (Memo line "Prop. 65 Penalties, 2016-00204") in
6 the amount of \$59,000.

7 All Section 4.1 and Section 4.3 payments shall be delivered to the Sheffer Law Firm at the following
8 address:

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

13 London Luxury shall be liable for payment of interest, at a rate of 10% simple interest per annum,
14 for all amounts due and owing under this Section that are not received by Sheffer Law Firm within
15 five business days of the due date for such payment.

16 London Luxury shall also pay any civil penalties pursuant to Section 4.2, on or before the
17 date agreed upon by the Parties or ordered by the Court pursuant to Section 4.2, with civil penalty
18 checks payable to "OEHHA" (Memo line "Prop 65 Penalties, 2016-00204") and "Susan Davia"
19 (Memo line "Prop 65 Penalties, 2016-00204") in the amount agreed to by the Parties or ordered by
20 the Court pursuant to Section 4.2 and as divided pursuant to California Health & Safety Code §
21 25249.12(c)(1) & (d).

22 London Luxury shall also pay attorney fees and costs pursuant to Section 4.2, on or before
23 the date agreed upon by the Parties or ordered by the Court pursuant to Section 4.2, with a check
24 payable to "Sheffer Law Firm" (Memo line "2016-00204") in the amount agreed upon by the Parties
25 or ordered by the Court pursuant to Section 4.2.

26 All Section 4.2 payments shall be delivered to plaintiff's counsel at the following address:

27 Sheffer Law Firm
28 Attn: Proposition 65 Controller
81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941

1 London Luxury shall also be liable for payment of interest, at a rate of 10% per annum
2 simple interest, for all amounts due and owing from it under Section 4.2 that are not received by
3 Sheffer Law Firm within two business days of the due date for such payment.
4

5 **4.5 Issuance of 1099 Forms**

6 After this Agreement has been executed and settlement funds have been transmitted to
7 Davia's counsel, London Luxury shall issue three separate 1099 forms, as follows:

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

11 (b) The second 1099 shall be issued to Davia in the amount paid pursuant to
12 Sections 4.1 and 4.2, whose address and tax identification number shall be furnished
13 upon request; and

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

16 **5. CLAIMS COVERED AND RELEASED**

17 **5.1 Davia's Release of London Luxury and Bed Bath**

18 5.1.1 This settlement agreement is a full, final and binding resolution between Davia
19 and London Luxury and Bed Bath of any violation of Proposition 65 that was or could have been
20 asserted by Davia against London Luxury and Bed Bath based on their failure to warn about
21 alleged exposures to DEHP contained in the Covered Products that were manufactured,
22 distributed, sold and/or offered for sale by them in California before the Effective Date.

23 5.1.2 In further consideration of the promises and agreements herein contained,
24 Davia, acting on her own behalf and in the public interest, releases London Luxury, its parents,
25 subsidiaries and their respective attorneys, employees, successors and assigns ("Releasee") and Bed
26 Bath its parents, subsidiaries and their respective attorneys, employees, successors and assigns
27 ("Downstream Releasee") from all claims for violations of Proposition 65 with respect to the Listed
28 Chemical in the Covered Products manufactured, distributed, sold and/or offered for sale by

1 London Luxury before the Effective Date as set forth in the 60-Day Notice of Violation to London
2 Luxury.

3 5.1.3 Davia, on her own behalf, also provides a general release herein which shall be
4 effective as a full and final accord and satisfaction, as a bar to all claims, actions and causes of
5 action, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out
6 of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by
7 London Luxury its parents, subsidiaries and their respective attorneys, employees, successors and
8 assigns and Bed Bath its parents, subsidiaries and their respective attorneys, employees, successors
9 and assigns prior to the Effective Date. Davia acknowledges that she is familiar with section 1542 of
10 the California civil code, which provides as follows:

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

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

23 The Parties further understand and agree that this Section 5.1 release shall not extend
24 upstream to any entities, other than London Luxury its parents, subsidiaries and their respective
25 attorneys, employees, successors and assigns, that manufactured the Covered Products or any
26 component parts thereof, or any distributors or suppliers who sold the Covered Products or any
27 component parts thereof to London Luxury.

28 ///

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1 **5.2 London Luxury and Bed Bath's Release of Davia**

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

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

15 London Luxury and Bed Bath each expressly waives and relinquishes any and all rights and
16 benefits which it/they may have under, or which may be conferred on it/them by the provisions of
17 Section 1542 of the California Civil Code as well as under any other state or federal statute or
18 common law principle of similar effect, to the fullest extent that it/they may lawfully waive such
19 rights or benefits pertaining to the released matters. In furtherance of such intention, the release
20 hereby given shall be and remain in effect as a full and complete release notwithstanding the
21 discovery or existence of any such additional or different claims or facts arising out of the released
22 matters.

22 **6. ENFORCEMENT**

23 Prior to bringing any motion, order to show cause, or other proceeding to enforce
24 Proposition 65 or any term of this Agreement relating to the alleged sale in California by
25 Downstream Releasee of any Covered Product without a warning that is alleged not to be Phthalate
26 Free in actual or alleged violation of this Agreement, Davia or such other enforcing individual or
27 entity (collectively, "Enforcer") shall provide a Notice of Violation ("NOV") to London Luxury.
28 The NOV shall include, for each such Covered Product: the date(s) the alleged violation(s) was

1 observed and the location at which the Covered Product was offered for sale, proof of product
2 purchase and independent laboratory test data demonstrating the concentration of any Listed
3 Chemical in the Covered Product. The Enforcer shall take no further action regarding the alleged
4 violation nor seek any monetary recovery for itself or its counsel, including additional civil
5 penalties or attorney fees and costs, if, within 30 days of receiving such NOV, London Luxury
6 provides evidence to Davia that either: (1) The Covered Product was manufactured, distributed or
7 sold by London Luxury before the Effective Date; or (2) London Luxury provides Davia evidence
8 that, since receiving the NOV, London Luxury took, or directed Downstream Releasee selling the
9 subject Covered Product, to take corrective action by removing the Covered Product identified in
10 the NOV from sale in California or providing a clear and reasonable warning for the Covered
11 Product identified in the NOV that is compliant with Section 3.3 of this Agreement or 27 Cal. Code
12 Regs. § 25603 (as then applicable).

13 **7. SEVERABILITY**

14 If, subsequent to court approval of this Agreement, any of the provisions of this Agreement
15 are determined by a court to be unenforceable, so long as all parties agree, the validity of the
16 enforceable provisions remaining shall not be adversely affected, unless the Court finds that any
17 unenforceable provision is not severable from the remainder of the Agreement.

18 **8. COURT APPROVAL**

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

25 The Agreement shall become null and void if, for any reason, it is not approved and entered
26 by the Court, as it is executed, within one year after it has been fully executed by all Parties. If the
27 Agreement becomes null and void after any payment of monies under this agreement, such monies
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1 shall be returned to defendant by payment of such monies to counsel of each defendant in trust for
2 that defendant.

3 **9. GOVERNING LAW**

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

5 **10. NOTICES**

6 When any Party is entitled to receive any notice under this Agreement, the notice shall be
7 sent by certified mail and electronic mail to the following:

8 For London Luxury LLC, to:

9 Marc Jason, CEO
10 London Luxury LLC
11 270 North Ave., Fl. 3
12 New Rochelle, NY 10801

13 With a copy to their counsel:

14 Amy Alderfer, Esq.
15 Cozen O'Connor
16 1299 Ocean Avenue
17 Suite 900
18 Santa Monica, CA 90401
19 AAlderfer@cozen.com

20 David Sunshine
21 Cozen O'Connor
22 277 Park Avenue, 16th Floor
23 New York NY 10172
24 DSunshine@cozen.com

25 For Bed Bath & Beyond, Inc., to:

26 Kenneth O. Bradley, Esq.
27 Vice President - Litigation
28 Bed Bath & Beyond Inc.
650 Liberty Ave.
Union NJ 07083

For Davia to:

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

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

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

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

6 **12. MODIFICATION**

7 This Agreement may be modified only by a written agreement of the Parties approved by
8 the Court or an order of the Court after a successful noticed motion of any Party. Any Party
9 seeking to modify this Agreement shall attempt in good faith to meet and confer with the other
10 Party prior to filing a motion to modify the Agreement.

11 **13. ADDITIONAL POST-EXECUTION ACTIVITIES**

12 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
13 is required to obtain judicial approval of this Agreement. In furtherance of obtaining such
14 approval, Davia, Bed Bath and London Luxury, and their respective counsel, agree to mutually
15 employ their best efforts to support the entry of this Agreement as a settlement agreement and
16 obtain approval of the Agreement - sufficient to render an order approving this agreement - by the
17 Court in a timely manner. Any effort by Bed Bath or London Luxury to impede judicial approval of
18 this Agreement shall subject such impeding party to liability for attorney fees and costs incurred by
19 plaintiff or her counsel in their efforts to meet or oppose such impeding conduct.

20 **14. ENTIRE AGREEMENT**

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

3 **15. ATTORNEY'S FEES**

4 **15.1** Should Davia prevail on any motion, application for order to show cause or other
5 proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable
6 attorney fees and costs incurred as a result of such motion, order or application, consistent with
7 C.C.P. § 1021.5. Should London Bed Bath or Luxury prevail on any motion, application for order to
8 show cause or other proceeding to enforce a violation of this Agreement, Bed Bath or London
9 Luxury may be entitled to its reasonable attorney fees and costs incurred as a result of such motion,
10 order or application upon a finding that Davia's prosecution of the motion or application lacked
11 substantial justification. For purposes of this Agreement , the term substantial justification shall
12 carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016,
13 *et seq.*

14 **15.2** Except as otherwise specifically provided herein, each Party shall bear its own
15 costs and attorney's fees in connection with the Notice.

16 **15.3** Nothing in this Section shall preclude a Party from seeking an award of sanctions
17 pursuant to law.

18 **16. NEUTRAL CONSTRUCTION**

19 Both Parties and their counsel have participated in the preparation of this Agreement and
20 this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to
21 revision and modification by the Parties and has been accepted and approved as to its final form by
22 all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement
23 shall not be interpreted against any Party as a result of the manner of the preparation of this
24 Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing
25 that ambiguities are to be resolved against the drafting Party should not be employed in the
26 interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code
27 Section 1654.

28






1 **17. COUNTERPARTS, FACSIMILE SIGNATURES**

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

5 **18. AUTHORIZATION**

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

9 **IT IS SO AGREED**

<p>11 Dated: March <u>27</u>, 2018</p> <p>12 </p> <p>13 _____</p> <p>14 Marc Jason, CEO London Luxury LLC</p>	<p>Dated: March <u>16</u>, 2018</p> <p></p> <p>_____</p> <p>Susart Davia</p>
<p>15 Dated: March <u>27</u>, 2018</p> <p>16 </p> <p>17 _____</p> <p>18 Steven H. Temares, CEO <i>Kenneth O Bradley</i> Bed Bath & Beyond, Inc. <i>V.P. - 61/13, 6102</i></p>	

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