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4 Attorneys for Plaintiff
5 SUSAN DAVIA

FILED

SEP 24 2019

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

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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 FOR THE COUNTY OF MARIN

10 UNLIMITED CIVIL JURISDICTION

11
12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 BED BATH & BEYOND INC., LIBERTY
PROCUREMENT CO. INC. and DOES 1-150,

16 Defendants.

Case No. CIV1900955

**JUDGMENT ON PROPOSITION 65
SETTLEMENT**

Action Filed: March 12, 2019
Trial Date: None Assigned

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

10 IT IS SO ORDERED.

11 Dated: SEP 24 2019

STEPHEN P. FRECCERO

Honorable Stephen Freccero
Judge of the Superior Court

EXHIBIT A

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Attorneys for Plaintiff
SUSAN DAVIA

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

SUSAN DAVIA,

Plaintiff,

v.

BED BATH & BEYOND, INC., LIBERTY
PROCUREMENT COMPANY, INC. AND
DOES 1-150,

Defendants.

Case No. CIV1900955

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

Action Filed: March 13, 2019
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 Susan Davia, (“Davia”) and Bed Bath & Beyond, Inc. and Liberty
5 Procurement Company, Inc. (hereafter, collectively, “Bed Bath”) with Davia and Bed Bath each
6 referred to as a Party and collectively referred to as the “Parties.”

7 **1.2 Davia**

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

11 **1.3 Bed Bath & Beyond, Inc. and Liberty Procurement Company, Inc.**

12 Bed Bath & Beyond, Inc. and Liberty Procurement Company, Inc. are both persons in the
13 course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of
14 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Davia alleges that Bed Bath participated in the manufacture (or other acquisition),
17 distribution and/or sale, in the State of California, of vinyl-coated hanger products, which products
18 exposed users to di(2-ethylhexyl)phthalate (DEHP) and di(isononyl)phthalate (DINP) without first
19 providing “clear and reasonable warning” under Proposition 65. DEHP is listed as a reproductive
20 and developmental toxicant pursuant to Proposition 65. DINP is listed as a carcinogen pursuant to
21 Proposition 65. DEHP and DINP shall hereinafter, where applicable, be referred to collectively as
22 the “Listed Chemical.”

23 **1.5 Notice of Violation**

24 On June 7, 2016, Davia served Bed Bath & Beyond, Inc., Liberty Procurement Company, Inc.
25 and various public enforcement agencies with a document entitled “60-Day Notice of Violation”
26 that provided public enforcers and the noticed entities with notice of alleged violations of Health &
27 Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP and DINP, a toxic
28 chemical found in Covered Products sold in California. Bed Bath & Beyond, Inc. and Liberty

1 Procurement Company, Inc. received the June 7, 2016, 60-Day Notice of Violation. On October 11,
2 2016, Davia served Bed Bath & Beyond, Inc., Liberty Procurement Company, Inc. and various
3 public enforcement agencies with a document entitled "Supplemental 60-Day Notice of Violation"
4 that provided public enforcers and the noticed entities with notice of alleged violations of Health &
5 Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP and DINP, a toxic
6 chemical found in Covered Products sold in California. Bed Bath & Beyond, Inc. and Liberty
7 Procurement Company, Inc. received the October 11, 2016, Supplemental 60-Day Notice of
8 Violation.

9 Bed Bath & Beyond, Inc. and Liberty Procurement Company, Inc. each represents that, as of
10 the date it executes this Agreement, it is not aware of any public enforcer that is diligently
11 prosecuting a Proposition 65 enforcement action related to DEHP or DINP in the Covered Products,
12 as identified in the 60-Day Notices.

13 **1.6 Complaint**

14 On March 12, 2019, Davia filed a Complaint in the Superior Court of the State of California
15 for the County of Marin, Case No. CIV1900955, alleging violations by Bed Bath & Beyond, Inc. and
16 Liberty Procurement Company, Inc. of Health and Safety Code § 25249.6 based on the alleged
17 exposures to DEHP and DINP in the Covered Products. On March 14, 2019, Davia filed a First
18 Amended Complaint in this action to correct a clerical error. Both the Complaint and First
19 Amended Complaint shall be hereafter referred to, collectively, as the "Action."

20 **1.7 No Admission**

21 This Agreement resolves claims that are denied and disputed by Bed Bath. The Parties enter
22 into this Agreement pursuant to a full and final settlement of any and all claims between the Parties
23 for the purpose of avoiding prolonged litigation. Bed Bath denies the material factual and legal
24 allegations contained in the Notice, maintains that it did not knowingly or intentionally expose
25 California consumers to any Listed Chemical through the reasonably foreseeable use of the
26 Covered Products and otherwise contends that, all Covered Products each has manufactured,
27 distributed and/or sold in California have been and are in compliance with all applicable laws.
28 Nothing in this Agreement shall be construed as an admission by Bed Bath of any fact, finding,

1 issue of law, or violation of law, nor shall compliance with this Agreement constitute or be
2 construed as an admission by the Bed Bath of any fact, finding, conclusion, issue of law, or violation
3 of law, such being specifically denied by Bed Bath. However, notwithstanding the foregoing, this
4 section shall not diminish or otherwise affect Bed Bath's obligations, responsibilities, and duties
5 under this Agreement.

6 **1.8 Consent to Jurisdiction**

7 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
8 Court has jurisdiction over Bed Bath as to the allegations in the 60-Day Notice received from Davia,
9 and this Agreement and that venue is proper in County of Marin. The Parties further stipulate that
10 this Agreement shall be deemed made pursuant to Code of Civil Procedure Section 664.6 and that
11 the Marin County Superior Court has jurisdiction over the parties to enforce the settlement until
12 performance in full of its terms.

13 **2. DEFINITIONS**

14 **2.1** The term "Products" or "Covered Products" shall mean all SALT brand vinyl-
15 coated hangers including, but not limited to, SALT 5-Tier Swing Arm Trouser Hanger, SALT
16 Trouser Hangers Set of 3, SALT 6-Tier Blouse Tree, SALT Skirt Hangers Set of 4 and SALT 4-Tier
17 Skirt Hanger.

18 **2.2** The term "Phthalate Free" Covered Products shall mean any component of any
19 Covered Product containing less than or equal to 1,000 parts per million ("ppm") of DEHP, DBP,
20 DINP, DIDP, DnHP and BBP as determined by a minimum of duplicate quality controlled test
21 results using Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C.

22 **2.3** "Effective Date" shall mean May 1, 2019

23 **2.4** The term "California Customer" shall mean any customer in a California Bed Bath
24 & Beyond retail store, any customer located in California or any customer with a California ship to
25 address.

26 **3. INJUNCTIVE RELIEF**

27 **3.1 Products No Longer in Bed Bath's Control**

28 No later than August 1, 2019, Bed Bath shall send a memo, electronic or otherwise

1 (“Notification Memo”) to the manager of each California Bed Bath & Beyond retail outlet. The
2 Notification Memo shall advise the recipient that the Covered Products “contain DEHP and DINP,
3 chemicals known to the State of California to cause cancer, birth defects or other reproductive
4 harm,” and request that the recipient label the Covered Products remaining in inventory pursuant
5 to Section 3.3, if not already so labelled, or return the unlabeled Covered Products to the vendor.
6 The Notification Memo shall request a response from the recipient within 15 days, confirming that
7 the Covered Products have been properly labelled or returned to the vendor. Bed Bath shall
8 maintain records of all correspondence or other communications generated pursuant to this Section
9 for two years after the Effective Date and shall promptly produce copies of such records upon
10 Davia’s written request.

11 **3.2 Product Reformulation Commitment**

12 **3.2.1** No later than August 1, 2019, Bed Bath shall provide the Phthalate Free
13 concentration standards of Section 2.2 to the manufacturer or vendors of any Covered Product and
14 request each such entity not to incorporate any raw or component vinyl materials that do not meet
15 the Phthalate Free concentration standards of Section 2.2 into any Covered Product. Bed Bath shall
16 maintain copies of all vendor correspondence relating to the phthalate concentration standards and
17 shall produce such copies to Davia within fifteen (15) days of receipt of written request from Davia.

18 **3.2.2** After the Effective Date, Bed Bath shall provide the Phthalate Free phthalate
19 concentration standards of Section 2.2 to any new manufacturer or vendor of any Covered Product
20 and request such manufacturer or vendor not to incorporate any raw or component materials that
21 do not meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product.

22 **3.2.3** No later than June 1, 2019, Bed Bath shall not sell any Covered Product to a
23 California Customer unless that Covered Product is Phthalate Free or is labelled with a warning
24 pursuant to Section 3.3. Bed Bath shall obtain and maintain any laboratory testing it receives
25 demonstrating the phthalate content of the Covered Product.

26 **3.3 Product Warnings for Non-Phthalate Free Covered Products**


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1 As of the Effective Date, Bed Bath shall not sell or ship any Covered Product that is not
2 Phthalate Free to a California Customer unless such Covered Product is sold or shipped with one of
3 the clear and reasonable warnings set forth hereafter.


4 Each warning shall be prominently placed with such conspicuousness as compared with
5 other words, statements, designs, or devices as to render it likely to be read and understood by an
6 ordinary individual under customary conditions *before* purchase or use. Each warning shall be
7 provided in a manner such that the consumer or user understands to which *specific* Covered
8 Product the warning applies, so as to minimize the risk of consumer confusion.

9 (a) **California Retail Stores.**


10 (i) **Product Warning Labeling:** For all Covered Products that are not
11 Phthalate Free sold from any Bed Bath & Beyond retail outlets in California, Bed Bath shall affix one
12 of the following warnings to the labeling of the Covered Product:

13  **WARNING:** The vinyl coating on this product can expose you
14 to chemicals, including DEHP and DINP, which are
15 known to the State of California to cause cancer
16 and birth defects or other reproductive harm. For
more information go to www.P65Warnings.ca.gov


17 or

18  **WARNING:** Vinyl Coating - Cancer and birth defects or other
19 reproductive harm. For more information go to
20 www.P65Warnings.ca.gov


21 or

22  **WARNING:** Cancer and birth defects or other reproductive
23 harm. For more information go to
24 www.P65Warnings.ca.gov

25 or

26  **WARNING:** Cancer and Reproductive Harm -
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(ii) **Existing Inventory Product Symbol Labeling:** For all Covered Products in Bed Bath inventory prior to the Effective Date that are not Phthalate Free and have not been labelled with any of the warnings above, Bed Bath may affix a yellow triangle symbol on the labelling of each Covered Product in conjunction with a Customer Advisory Poster (“CAP”). Any CAP shall consist of white paper or cardboard, no less than 8.5” x 11” in size, with black type equal or equivalent to size 12 Book Antiqua and shall be displayed *on the same wall or display* of each Covered Product and in reasonably clear view of any customer looking at any Covered Products. The CAP shall include the following language:

PROPOSITION 65 WARNING: The Following products identified with this symbol  contain chemicals, such as DEHP and DINP, known to the State of California to cause cancer and birth defects or other reproductive harm. Please wash hands after handling.

The CAP shall include thereafter a list of each such Covered Product identified by both brand name and the same product name as appears on the Covered Product label.

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


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

 **WARNING** : The vinyl coating on this product can expose you to chemicals, including DEHP and DINP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For


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more information go to www.P65Warnings.ca.gov;


or, if Bed Bath has complied with the on-product labelling pursuant to Section 3.3(a)(i) and not simply the CAP labelling pursuant to Section 3.3(a)(ii),

 **WARNING:** Vinyl Coating - Cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov;

or

 **WARNING:** Cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov;

or

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

Where it is impracticable to provide the warning on the same page and in the same location as the display and/or description of the Covered Product, Bed Bath may utilize a designated symbol to cross reference the applicable warning and shall define the term “designated symbol” with the warning language on the inside of the front or back cover of the catalog or on the same page as any order form for the Old Covered Product(s). For any catalog printed before August 30, 2018, the cross reference warning shall be comprised of the following language:

WARNING: Certain products identified with this symbol ▼ can expose you to DEHP and DINP, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov. Please wash hands after handling.


In either case, 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

1 symbol appears, Bed Bath must provide a header or footer directing the consumer to the warning
2 language and definition of the designated symbol.


3 If Bed Bath elects to provide warnings in any mail order catalog, then the warnings must be
4 included in all catalogs offering to sell one or more Covered Products printed after the Effective
5 Date.

6 (ii) **Internet Website Warning.** A warning must be given in conjunction
7 with the sale, or offer of sale, of any Covered Products by Bed Bath via the Internet, provided it
8 appears either: (a) on the same web page on which a Covered Product is displayed; (b) on the same
9 web page as the order form for a Covered Product; (c) on the same page as the price for any
10 Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout
11 process.


12 One of the following warning statements shall be used and shall appear in any of the above
13 instances adjacent to or immediately following the display, description, or price of the Covered
14 Product for which it is given in the same type size or larger than the Covered Product description
15 text:

16
17  **WARNING:** The vinyl coating on this product can expose you
18 to chemicals, including DEHP and DINP, which are
19 known to the State of California to cause cancer
and birth defects or other reproductive harm. For
more information go to www.P65Warnings.ca.gov;

20 or, if Bed Bath has complied with the on-product labelling pursuant to Section 3.3(a)(i) and not
21 simply the CAP labelling pursuant to Section 3.3(a)(ii),

22
23  **WARNING:** Vinyl Coating - Cancer and birth defects or other
24 reproductive harm. For more information go to
www.P65Warnings.ca.gov;

25 or

26
27  **WARNING:** Cancer and birth defects or other reproductive
28 harm. For more information go to
www.P65Warnings.ca.gov;

1 or



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

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5 Alternatively, the designated symbol ▼ may appear adjacent to or immediately following
6 the display, description, or price of the Covered Product for which a warning is being given. The
7 following warning statement shall appear elsewhere on the same web page:

8 **WARNING:** Products identified on this page with the following
9 symbol ▼ can expose you to DEHP and DINP,
10 which are known to the State of California to cause
11 cancer and birth defects or other reproductive
12 harm. For more information go to
13 www.P65Warnings.ca.gov. Please wash hands
14 after handling.

15 Should 27 C.C.R. Section 25603 be amended in the future in such a manner as to revise or
16 modify the safe harbor warning language for consumer products, Bed Bath may choose to modify
17 the warning language required by this Section so long as it is in compliance with 27 C.C.R. Section
18 25603, as amended.

19 **4. MONETARY PAYMENTS**

20 **4.1 Civil Penalty**

21 As a condition of settlement of all the claims referred to in this Consent to Judgment, Bed
22 Bath shall pay a total of \$7,000 in civil penalties in accordance with California Health & Safety Code
23 § 25249.12(c)(1) & (d).

24 **4.2 Augmentation of Penalty Payments**

25 For purposes of the penalty assessment under this Agreement, Davia is relying entirely
26 upon Bed Bath and its counsel for accurate, good faith reporting to Davia of the nature and
27 amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers
28 and presents to Bed Bath evidence that the Covered Products have been distributed by Bed Bath in
sales volumes materially different than those identified by Bed Bath prior to execution of this
Agreement, then Bed Bath shall be liable for an additional penalty amount of \$10,000.00. Bed Bath

1 shall also be liable for any reasonable, additional attorney fees expended by Davia in discovering
2 such additional retailers or sales. Davia agrees to provide Bed Bath with a written demand for all
3 such additional penalties and attorney fees under this Section. After service of such demand, Bed
4 Bath shall have thirty (30) days to agree to the amount of fees and penalties owing by Bed Bath and
5 submit such payment to Davia in accordance with the method of payment of penalties and fees
6 identified in Section 4.1 and 4.4. Should this thirty (30) day period pass without any such
7 resolution between the parties and payment of such additional penalties and fees, Davia shall be
8 entitled to file a formal legal claim for damages for breach of this contract and shall be entitled to all
9 reasonable attorney fees and costs relating to such claim.

10 **4.3 Reimbursement of Davia’s Fees and Costs**

11 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
12 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
13 issue to be resolved after the material terms of the agreement had been settled. Bed Bath then
14 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
15 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
16 Davia and her counsel under general contract principles and the private attorney general doctrine
17 codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter,
18 except fees that may be incurred on appeal. Under these legal principles, Bed Bath shall pay
19 Davia’s counsel, on or before the Effective Date, the amount of \$42,500 for fees and costs incurred
20 investigating, litigating and enforcing this matter. Such payment shall be made payable to “Sheffer
21 Law Firm”.

22 **4.4 Payment Procedures**

23 No later than fifteen (15) days after execution of this Agreement, Bed Bath shall deliver
24 all settlement payment funds required by this Agreement to its counsel. Bed Bath’s counsel shall
25 confirm receipt within one (1) week of settlement funds in writing to plaintiff’s counsel and,
26 thereafter, hold Bed Bath’s settlement checks or the amounts paid by Bed Bath until such time as
27 the Court approves this settlement contemplated by Section 7. Within five (5) business days of
28 the date plaintiff provides electronic mail notice to counsel for Bed Bath that the Court has

1 approved this settlement, Bed Bath’s counsel shall deliver the settlement payments to plaintiff’s
2 counsel as follows:

3 a civil penalty check payable to “OEHHA” (Memo line “Prop 65 Penalties, 2016-01172”),
4 in the amount of \$5,250 and a civil penalty check payable to “Susan Davia” (Memo line “Prop 65
5 Penalties, 2016-01172”) in the amount of \$1,750; and

6 an attorney fee and cost reimbursement check payable to “Sheffer Law Firm” (Memo line
7 “2016-01172”) in the amount of \$42,500.

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

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

14 All Section 4.2 civil penalty and attorney fee/cost payments, if any, shall be delivered to
15 plaintiff’s counsel at the following address on or before the date agreed upon pursuant to that
16 section:

17 Sheffer Law Firm
18 Attn: Proposition 65 Controller
19 81 Throckmorton Ave., Suite 202
20 Mill Valley, CA 94941

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

24 **4.5 Issuance of 1099 Forms**

25 After this Agreement has been executed and the settlement funds have been transmitted to
26 Davia’s counsel, Bed Bath shall issue three separate 1099 forms, as follows:

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

(b) The second 1099 shall be issued to Davia in the amount paid pursuant to Sections 4.1 and

1 4.2, whose address and tax identification number shall be furnished upon request; and

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

4 **4.6 Delayed or Non-Payment of Civil Penalties or Attorney Fees**

5 While the obligations of this agreement are binding upon execution, the Release of Bed Bath
6 shall not become effective until after all Section 4.1 and Section 4.3 monetary payments have been
7 made by Bed Bath and all funds have cleared.

8
9 **5. RELEASES**

10 **5.1 DAVIA'S RELEASE OF BED BATH**

11 **5.1.1** This settlement agreement is a full, final and binding resolution between Davia, Bed
12 Bath, of any violation of Proposition 65 that was or could have been asserted by Davia on behalf of
13 herself, her representatives or attorneys, against Bed Bath, its directors, officers, employees and
14 attorneys ("Releasees"), based on their failure to warn about alleged exposures to any Listed
15 Chemical contained in the Covered Products that were sold by Bed Bath in California before the
16 Effective Date.

17 **5.1.2** In further consideration of the promises and agreements herein contained, Davia on
18 behalf of herself, her past and current representatives and attorneys, hereby waives all Davia's
19 rights to institute or participate in, directly or indirectly, any form of legal action and releases all
20 claims that Davia may have, including, without limitation, all actions, and causes of action, in law
21 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or
22 expenses -- including, but not limited to, investigation fees, expert fees, and attorneys' fees, but
23 exclusive of fees and costs on appeal -- limited to and arising under proposition 65 with respect to
24 the Listed Chemical in the Covered Products sold by Bed Bath before the Effective Date
25 (collectively "claims"), against Bed Bath and Releasees.

26 **5.1.3** Davia also, in her individual capacity, provides a general release herein which shall
27 be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
28 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of

1 Davia, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out
2 of the subject matter of the Notice as to Covered Products sold by Bed Bath or Releasees before the
3 Effective Date. Davia acknowledges that she is familiar with section 1542 of the California civil
4 code, which provides as follows:

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

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

20 This Section 5.1 release is expressly limited to those claims that arise under Proposition 65,
21 as such claims relate to Bed Bath's alleged failure to warn about exposures to or identification of the
22 Listed Chemical contained in the Covered Products sold before the Effective Date as such claims
23 are identified in Ms. Davia's Proposition 65 60-Day Notices to Bed Bath.

24 The Parties further understand and agree that this Section 5.1 release shall not extend
25 upstream to any entities, other than Bed Bath, 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 Bed Bath.

28 **5.2 Bed Bath's Release of Davia**

Bed Bath, on behalf of itself, its past and current agents, representatives, attorneys,
successors, and/or assignees, hereby waives any and all claims against Davia and her attorneys and

1 other representatives, for any and all actions taken or statements made (or those that could have
2 been taken or made) by Davia and her attorneys and other representatives, whether in the course of
3 investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with
4 respect to the Products. Bed Bath acknowledges that it is familiar with Section 1542 of the
5 California Civil Code, which provides as follows:

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

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

18 **6. ENFORCEMENT**

19 **6.1** Prior to bringing any motion, order to show cause, or other proceeding to enforce
20 Proposition 65 or any term of this Agreement relating to the alleged sale in California by any
21 Releasee of any Covered Product without a warning that is alleged to not be Phthalate Free in
22 actual or alleged violation of this Agreement, Davia shall provide a Notice of Violation (“NOV”) to
23 Bed Bath. The NOV shall include, for each such Covered Product: the date(s) the alleged
24 violation(s) was observed and the location at which the product incorporating the Covered Product
25 was offered for sale, and shall be accompanied by all test data obtained by Davia regarding each
26 such Covered Product. Davia shall take no further action regarding the alleged violation nor seek
27 any monetary recovery for herself or her counsel if, within 30 days of receiving such NOV, (1) Bed
28 Bath provides written notice to Davia that the Covered Product was distributed, sold, or offered for

1 sale by Bed Bath before the Effective Date or (2) Bed Bath provides Davia evidence that, since
2 receiving the NOV, Bed Bath took, or directed the Releasee to take, corrective action by (a)
3 contacting the vendor and demanding proof of its compliance with the Phthalate Free
4 requirements, (b) providing such proof to Davia and (3) removing the Covered Product identified
5 in the NOV from sale in California or providing a clear and reasonable warning for the Covered
6 Product identified in the NOV pursuant to Section 3.3(a)(1) of this Agreement.

7 **7. COURT APPROVAL**

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

17 **8. SEVERABILITY**

18 If any of the provisions of this Agreement are found by a court to be unenforceable, the
19 validity of the enforceable provisions remaining shall not be adversely affected, unless the Court
20 finds that any unenforceable provision is not severable from the remainder of the Agreement.

21 **9. GOVERNING LAW**

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

23 **10. NOTICES**

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

26 For Bed Bath & Beyond, Inc. and Liberty Procurement Company, Inc., to:

27 Steven H. Temares, CEO
28 Bed Bath & Beyond Inc.

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Liberty Procurement Company, Inc.
650 Liberty Avenue
Union, New Jersey 07083

With a copy to their counsel:

Todd O. Maiden
Reed Smith
101 Second Street, Suite 1800
San Francisco, CA 94105
TMaiden@ReedSmith.com

For Davia to:

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

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

11. 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).

12. MODIFICATION

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

13. ENTIRE AGREEMENT

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

1 provisions whether or not similar, nor shall such waiver constitute a continuing waiver

2 **14. ATTORNEY'S FEES**

3 **14.1** Should Davia prevail on any motion, application for order to show cause or other
4 proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable
5 attorney fees and costs incurred as a result of such motion, order or application, consistent with
6 C.C.P. § 1021.5. Should Bed Bath prevail on any motion, application for order to show cause or
7 other proceeding to enforce a violation of this Agreement, Bed Bath may be entitled to its
8 reasonable attorney fees and costs incurred as a result of such motion, order or application upon a
9 finding that Davia's prosecution of the motion or application lacked substantial justification. For
10 purposes of this Agreement , the term substantial justification shall carry the same meaning as used
11 in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

12 **14.2** Except as otherwise specifically provided herein, each Party shall bear its own
13 costs and attorney's fees in connection with the Notice.

14 **14.3** Nothing in this Section shall preclude a Party from seeking an award of sanctions
15 pursuant to law.

16 **15. NEUTRAL CONSTRUCTION**

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

26 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

1 shall constitute one and the same document.

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4 **17. AUTHORIZATION**

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

7 **IT IS SO AGREED**

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<p>Dated: July __, 2019</p> <p>_____ Steven H. Temares, CEO Bed Bath & Beyond Inc. Liberty Procurement Company, Inc.</p>	<p>Dated: July 15, 2019</p>  <p>Susan Davia</p>
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1 shall constitute one and the same document.


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4 **17. AUTHORIZATION**

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

7 **IT IS SO AGREED**

<p>9 Dated: July __, 2019</p> <p>11 _____ 12 Steven H. Temares, CEO 13 Bed Bath & Beyond Inc. Liberty Procurement Company, Inc.</p>	<p>10 Dated: July 15, 2019</p> <p>11  12 Susan Davia</p>
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14 Dated: July 29, 2019

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16 KAR

17 Allan N. Rauch

18 KOB

19 General Counsel
20 Bed Bath + Beyond Inc.

21 Secretary
22 Liberty Procurement Co. Inc.

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