

FILED

SEP 24 2019

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

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6
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 E&E CO. LTD., JLA HOME, INC. and DOES
1-150,

16 Defendants.

Case No. CIV1902124

**JUDGMENT ON PROPOSITION 65
SETTLEMENT**

Action Filed: May 31, 2019
Trial Date: None Assigned

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

10 **IT IS SO ORDERED.**

11 Dated: SEP 24 2019

STEPHEN P. FRECCERO

Honorable Stephen P. Freccero
Judge of the Superior Court

EXHIBIT A

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SUSAN DAVIA

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

SUSAN DAVIA,

Plaintiff,

v.

E&E CO., LTD., JLA HOME, INC. DOES 1-
150,

Defendants.

Case No. CIV 1902124

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

Action Filed: May 29, 2019
Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Consent to Judgment (“Consent Judgment” or “Agreement”) is entered into by and
4 between Susan Davia (“Plaintiff or “Davia”), on the one hand, and E&E Co., Ltd. and its dba JLA
5 Home, Inc. (collectively, “Defendant” or “E&E”), on the other hand, with Davia and E&E
6 collectively referred to as the “Parties.”

7 **1.2 Davia**

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

11 **1.3 E&E Co., Ltd.**

12 For purposes of this Consent Judgment only, E&E is deemed a person in the course of doing
13 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
14 Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Davia alleges that E&E manufactures, distributes and/or sells, in the State of California,
17 various bedding products packaged in vinyl/PVC or plastic display and storage cases/bags that
18 exposed California consumers to di(2-ethylhexyl)phthalate (“DEHP”) without first providing a
19 “clear and reasonable warning” under Proposition 65. DEHP is listed pursuant to Proposition 65,
20 and shall be referred to hereafter as the “Listed Chemical.”

21 **1.5 Notices of Violation**

22 On August 25, 2016, Davia served E&E and various public enforcement agencies with a
23 document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed
24 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
25 California consumers of the presence of, and potential exposure to, DEHP from certain vinyl/PVC
26 or plastic bedding storage and display cases/bags and packaging products sold in California (AG
27 Notice 2016-00938). The August 25, 2016, 60-Day Notice of Violation served on E&E shall be
28 referred to herein as “Notice 1.”

1 On October 11, 2016, Davia served Liberty Procurement Company, Inc., Bed Bath & Beyond,
2 Inc. and various public enforcers with a Proposition 65 60-Day Notice of Violation that provided
3 public enforcers and these entities with notice of alleged violations of Health & Safety Code § 25249.6
4 for failing to warn consumers of the presence of, and potential exposure to, DEHP from certain
5 vinyl/PVC or plastic bedding storage and display cases/bags and packaging products sold in
6 California (AG Notice 2016-01164). The October 11, 2016, 60-Day Notice of Violation served on
7 Liberty Procurement Company, Inc. and Bed Bath & Beyond, Inc. shall be referred to herein as
8 “Notice 2”.

9 On October 10, 2017, Davia amended Notice 2 to include E&E and served E&E, Liberty
10 Procurement Company, Inc. and Bed Bath & Beyond, Inc. with a Proposition 65 60-Day Notice of
11 Violation that provided public enforcers and these entities with notice of alleged violations of Health
12 & Safety Code § 25249.6 for failing to warn consumers of the presence of, and potential exposure to,
13 DEHP from certain vinyl/PVC or plastic bedding storage and display cases/bags and packaging
14 products sold in California (AG Notice 2017-00276). The October 10, 2017, 60-Day Notice of Violation
15 served on E&E, Liberty Procurement Company, Inc. and Bed Bath & Beyond, Inc. shall be referred to
16 herein as “Notice 3”.

17 On July 6, 2017, Davia served Macy’s Merchandising Group, Inc., Macy’s West Stores, Inc.,
18 Macy’s Inc., MSLO, Inc., Sequential Brands Group and various public enforcement agencies with a
19 document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed
20 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
21 consumers of the presence of, and potential exposure to, DEHP from certain vinyl/PVC or plastic
22 bedding storage and display cases/bags and packaging products sold in California (AG Notice 2017-
23 01683). The July 6, 2017, 60-Day Notice of Violation served on Macy’s Merchandising Group, Inc.,
24 Macy’s West Stores, Inc., Macy’s Inc., MSLO, Inc. and Sequential Brands Group shall be referred to
25 herein as “Notice 4”.

26 E&E received Notices 1 and 3. E&E has been provided notice of Notices 2 and 4 through the
27 entities upon which each was served. E&E supplied some of the vinyl/PVC or plastic bedding
28 storage and display cases/bags and packaging products that are the subject of Notices 2 and 4. The

1 Parties represent that, as of the date they execute this Consent Judgment, they believe that no public
2 enforcer is diligently prosecuting a Proposition 65 enforcement action related to the Listed Chemical
3 in the products identified in Notices 1 through 4 (collectively the “Notices”).

4 **1.6 Complaint**

5 On May 31, 2019, Davia, acting in the interest of the general public in California, filed a
6 representative Complaint (the “Complaint” or the “Action”) in the Superior Court of the State of
7 California for the County of Marin, Case No. CIV 1902124, alleging violations by E&E, and Does 1-
8 150 of Health & Safety Code § 25249.6, based, *inter alia*, on the alleged California consumer
9 exposures to the Listed Chemical contained in vinyl/PVC or plastic bedding storage and display
10 cases/bags and packaging products sold in California.

11 **1.7 No Admission**

12 This Consent Judgment resolves claims that are denied and disputed by E&E. The Parties
13 enter into this Consent Judgment pursuant to a full, final, and binding settlement of any and all
14 claims between the Parties for the purpose of avoiding prolonged litigation. E&E denies the
15 material factual and legal allegations contained in the Notices and Complaint, and maintains that it
16 did not knowingly or intentionally expose California consumers to the Listed Chemical through the
17 reasonably foreseeable use of the Covered Products or Covered Packaging (defined hereafter). E&E
18 further contends that all Covered Products and Covered Packaging it has manufactured, distributed
19 and/or sold in California, have been and are in compliance with all applicable laws, and are
20 completely safe for their intended use. Nothing in this Consent Judgment shall be construed as an
21 admission by E&E of any fact, finding, issue of law, or violation of law, nor shall compliance with
22 this Agreement constitute or be construed as an admission by E&E of any fact, finding, conclusion,
23 issue of law, or violation of law, all of which are specifically denied by E&E. However,
24 notwithstanding the foregoing, this section shall not diminish or otherwise affect E&E’s obligations,
25 responsibilities, and duties under this Agreement.

26 **1.8 Consent to Jurisdiction**

27 For purposes of the enforcement of this Consent Judgment only, the Parties stipulate that
28 the Marin County Superior Court has jurisdiction over the Parties, and that venue is proper in

1 County of Marin. The Parties further stipulate that this Agreement shall be deemed made pursuant
2 to Code of Civil Procedure Section 664.6, and that the Marin County Superior Court has jurisdiction
3 to enforce the Agreement until performance in full of its terms.

4 **2. DEFINITIONS**

5 **2.1** "Covered Product" or "Covered Products" shall mean any textile bedding product
6 distributed by E&E, including, but not limited, to Home Design Classic Mattress Pads (all sizes), LP
7 Charcoal Bedding 2 Piece Bed Sets (all sizes), Martha Stewart Soft Fleece Blanket (all sizes), and any
8 pillow cases, bed sheets, bed skirts, throws, shams, quilts, comforters, pillows, blankets, and similar
9 bedding products. "Covered Packaging" shall mean all vinyl/PVC or plastic product packaging or
10 storage and display cases/bags in which Covered Products are sold to California consumers.
11 Covered Packaging does not include packaging supplied by EA International, Inc. that is covered
12 and released by the Consent Judgment entered into between Davia and EA International, Ltd. in the
13 case captioned *Davia v. EA International, Ltd.*, Marin County Superior Court Case No. CIV 1801939.

14 **2.2** "Phthalate Free" Covered Packaging shall mean that each vinyl component of each
15 Covered Packaging contains less than or equal to 1,000 parts per million ("ppm") of di(2-ethylhexyl)
16 phthalate ("DEHP"), dibutyl phthalate ("DBP"), diisononyl phthalate ("DINP"), diisodecyl
17 phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP"), and butyl benzyl phthalate ("BBP"), as
18 determined by test results using Environmental Protection Agency ("EPA") testing methodologies
19 3580A and 8270C, or equivalent testing methodologies used by federal or state agencies for
20 determining phthalate content in a solid substance.

21 **2.3** "California Customer" shall mean any customer with a principle business office in
22 California, any customer with a ship to address in California, any customer that Defendant
23 reasonably understands maintains retail store outlets in California, or any ecommerce seller that
24 Defendant reasonably understands sells to any customers in California.

25 **2.4** "Effective Date" shall mean June 30, 2019.

26 **3. INJUNCTIVE-TYPE RELIEF**

27 **3.1 Covered Packaging Reformulation Commitment**

28 **3.1.1** No later than the Effective Date, to the extent it has not already done so, E&E shall

1 provide the Phthalate Free concentration standards of Section 2.2 to its then-current vendors of any
2 Covered Product that is sold in California in Covered Packaging, and any direct vendor of Covered
3 Packaging that will be sold to a California Customer, and instruct such vendors not to provide any
4 such Covered Packaging that does not meet the Phthalate Free concentration standards of Section
5 2.2. E&E shall maintain copies of all vendor correspondence relating to the Phthalate Free
6 concentration standards for two (2) years after the Effective Date and shall produce such copies to
7 Davia within fifteen (15) days of receipt of reasonable written request from Davia.


8 **3.1.2** After the Effective Date, E&E shall provide the Phthalate Free concentration
9 standards of Section 2.2 to any New Vendors (defined below) of any Covered Product that will be
10 sold to a California Customer in Covered Packaging, or new direct vendors of Covered Packaging
11 that will be sold in California, and instruct such entities not to provide any such Covered Packaging
12 that does not meet the Phthalate Free concentration standards of Section 2.2. "New Vendors" means
13 vendors of Covered Products or Covered Packaging from whom E&E was not obtaining Covered
14 Products or Covered Packaging as of the Effective Date. Prior to purchase and acquisition of any
15 Covered Product in Covered Packaging or Covered Packaging from any New Vendor, E&E or its
16 vendor shall obtain written confirmation and laboratory test results from the New Vendor
17 demonstrating compliance with the Phthalate Free concentration standard for any Covered
18 Packaging. For two (2) years after the Effective Date, for every Covered Product sold in Covered
19 Packaging, or Covered Packaging that E&E manufactures, causes to be manufactured, orders, causes
20 to be ordered, or otherwise obtains directly from a New Vendor, E&E shall maintain copies of all
21 testing of such products demonstrating compliance with this section (or direct its vendors to do so),
22 shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration
23 standards (or direct its vendors to do so), and shall produce such copies to Davia within fifteen (15)
24 days of receipt of reasonable written request from Davia.

25 **3.1.3** As of June 30, 2019, E&E shall not manufacture, cause to be manufactured, order or
26 cause to be ordered any Covered Packaging or Covered Product with Covered Packaging that will
27 be offered for sale to a California Customer that is not Phthalate Free. For every Covered Packaging
28 or Covered Product with Covered Packaging E&E manufactures, causes to be manufactured, orders,


1 causes to be ordered, or otherwise sells to a California Customer after the Effective Date, E&E shall,
2 for a period of two (2) years after placing the order, maintain copies of all testing of the packaging
3 demonstrating compliance with this section (or direct its vendors to do so), shall maintain copies of
4 all vendor correspondence relating to the Phthalate Free concentration standards of Section 2.2 (or
5 direct its vendors to do so), and shall produce such copies to Davia within fifteen (15) days of receipt
6 of reasonable request made in writing from Davia.

7 **3.2 Previously Distributed Covered Packaging.**

8 **3.2.1 Customer Notification** – E&E represents that its supply and distribution records allow
9 it to identify retailers or distributors in California that it reasonably believes have any inventory of
10 Covered Products with Covered Packaging that is not Phthalate Free or that does not contain a
11 Proposition 65 warning. To the extent it has not already done so, no later than 30 days after the
12 Effective Date, E&E shall send a letter, electronic or otherwise (“Notification Letter”) to each retailer
13 or distributor in California that E&E reasonably understands or believes has any inventory of
14 Covered Products with Covered Packaging that is not Phthalate Free or that does not contain a
15 Proposition 65 warning. The Notification Letter shall advise the recipient that Covered Packaging
16 for Covered Products contains DEHP, and shall inform the recipient that all such Covered
17 Packaging must have a label attached to the packaging, which label contains one of the following
18 warnings, before it is sold in the California market or to a California customer. The Notification
19 Letter shall include a sheet of adhesive stickers with one of the following warning statements in no
20 less than Book Antiqua, point 9 font (or its equivalent):

21
22  [California Proposition 65] **WARNING:** The vinyl packaging
23 for this product can expose you to chemicals, including di(2-
24 ethylhexyl)phthalate (DEHP), that 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;

25 or

26  [California Proposition 65] **WARNING:** for the vinyl
27 packaging in which this product is sold – Cancer and
28 Reproductive Harm - www.P65Warnings.ca.gov

1 Language in brackets is optional. The Notification Letter shall be sent with return receipt requested.
2 The Notification Letter shall request written confirmation from the recipient, within 15 days of
3 receipt, that all such inventory for California sale has been, or will be, labelled with the warning
4 language identified in this section.


5 **3.2.2** E&E shall maintain records of compliance correspondence, inventory reports or other
6 communication confirming compliance with Section 3.2.1 for two (2) years from the Effective Date
7 and shall produce copies of such records upon reasonable written request by Davia.

8 **3.3 Existing E&E Inventory Covered Product Packaging**


9 As of the Effective Date, for any E&E inventory of Covered Products with Covered
10 Packaging that E&E has not or cannot confirm is Phthalate Free by reference to a reliable laboratory
11 test result or express vendor assurance, and that is not already labeled with a Proposition 65
12 warning, E&E shall not sell or ship any such Covered Product to a California Customer unless E&E
13 has complied with all warning requirements set forth in this Section 3.3.

14 **3.3.1 Covered Packaging Label.**

15 As of the Effective Date, for all Covered Products with non-Phthalate Free Covered
16 Packaging sold to a California Customer that is not already labeled with a Proposition 65 warning,
17 E&E shall affix a label to the Covered Packaging that states:

18
19  [California Proposition 65] **WARNING:** The vinyl packaging
20 for this product can expose you to chemicals, including di(2-
21 ethylhexyl)phthalate (DEHP), that are known to the State of
22 California to cause cancer and birth defects or other reproductive
23 harm. For more information go to www.P65Warnings.ca.gov;

24 or

25  [California Proposition 65] **WARNING:** for the vinyl
26 packaging in which this product is sold - Cancer and
27 Reproductive Harm - www.P65Warnings.ca.gov

28 Language in brackets is optional. The label shall be affixed with such conspicuousness as compared
with other words, statements, designs, or devices, as to render it likely to be read and understood by
an ordinary individual under customary conditions *before* purchase or use.

1 **3.3.2 Internet Website Warning.**

2 To the extent that E&E commences any direct sale of Covered Products with Covered
3 Packaging that is not Phthalate Free to California Customers via an ecommerce website that it
4 controls, then E&E shall include one of the warning messages from Section 3.3.1 in conjunction with
5 such sale. The internet warning or a clearly marked hyperlink to the warning using the word(s)
6 “[California Proposition 65] **WARNING**” (language in brackets optional) shall appear either: (a) on
7 the same web page on which a Covered Product is displayed; (b) on the same web page as the order
8 form for a Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one
9 or more web pages displayed to a purchaser during the checkout process.

10 **4. MONETARY PAYMENTS**

11 **4.1 Civil Penalty**

12 As a condition of settlement of all the claims referred to in this Consent Judgment, E&E shall
13 cause to be paid a total of \$3,000 in civil penalties in accordance with California Health & Safety Code
14 § 25249.12(c)(1) & (d). This payment shall cover all claims by Davia for penalties, damages, or any
15 other form of monetary relief from E&E for the claims asserted in the Notices concerning Covered
16 Products, except for Davia’s attorney’s fees and costs as set forth in Section 4.3 below.

17 **4.2 Augmentation of Penalty Payments**

18 For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon
19 E&E and its counsel for accurate, good faith reporting to Davia of the nature and amounts of sales
20 activity of the Covered Products in Covered Packaging in California. After a reasonable
21 investigation, E&E provided Davia with a good faith estimate of its relevant California sales of
22 Covered Products in Covered Packaging allegedly containing DEHP in excess of 1000 ppm that were
23 sold without a Proposition 65 warning in California, taking account of other Davia settlements that
24 released Covered Products in Covered Packaging utilized by E&E, including Davia’s settlement
25 with EA International. If within nine (9) months of the Effective Date, Davia discovers and presents
26 to E&E evidence that Covered Products in Covered Packaging containing DEHP in excess of 1000
27 ppm have been distributed in California by E&E without Proposition 65 warnings in sales volumes
28 materially different (more than 25%) from those identified by E&E prior to execution of this

1 Agreement, then E&E shall be liable for an additional penalty amount of \$10,000. E&E shall also pay
2 reasonable, additional attorney fees expended by Davia in discovering such additional sales and
3 reporting them to E&E in accordance with this section. Davia agrees to provide E&E with a written
4 demand for such additional penalties and attorney fees under this Section, along with supporting
5 evidence of any excess California sales beyond those provided by E&E prior to the execution of this
6 Agreement, and concerning the reasonableness of any Davia attorney's fees. After service of such
7 demand, the Parties will meet and confer for a period of 30 days to allow E&E to present evidence
8 supporting its position that it provided a good faith estimate of relevant sales. If after meeting and
9 conferring, Davia still maintains the claim of materially different sales, E&E shall have thirty (30)
10 days to pay the additional civil penalties amount and attorney's fees demanded or negotiate with
11 Davia as to an agreed amount of fees and penalties to be paid in accordance with the method of
12 payment of penalties and fees identified in Section 4.4. Should the Parties fail to reach an agreement
13 within thirty (30) days, Davia shall be entitled to file an action for breach of this Agreement in which
14 the sole issues for resolution by the Court shall be: (1) whether Covered Products were distributed
15 in California by E&E in sales volumes materially different (more than 25%) from those identified by
16 E&E prior to execution of this Agreement; and (2) if the Court finds in favor of Davia on materially
17 different sales, the amount of reasonable attorney's fees Davia is entitled to recover for discovering
18 the additional sales and reporting them to E&E in accordance with this section. In any action
19 brought under this Section 4.2, the prevailing party shall be entitled to recover its reasonable
20 attorney's and other fees and costs.

21 **4.3 Reimbursement of Davia's Fees and Costs**

22 The Parties acknowledge that Davia and her counsel declined to negotiate any
23 reimbursement of Plaintiff's attorney's fees or costs until agreement was reached on all other terms
24 of this Consent Judgment. The Parties then reached an accord on the reimbursement due to Davia
25 and compensation of her counsel for reasonable attorney's fees and costs under general contract
26 principles and consistent with the private attorney general doctrine codified at California Code of
27 Civil Procedure section 1021.5. Under these principles, E&E shall reimburse Davia the amount of
28 \$26,500 in complete resolution of any claim against E&E for reasonable attorney's fees and expenses,

1 including but not limited to investigation, testing, and any other expense incurred investigating and
2 serving the Notices, investigating the products and parties covered by the Notices, negotiating a
3 resolution of this matter, and seeking and obtaining court approval of this Consent Judgment.

4 **4.4 Payment Procedures**

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

- 13 1. a civil penalty check payable to "OEHHA" (Memo line "Prop 65 Penalties, 2016-00938"),
14 in the amount of \$2,250;
- 15 2. a civil penalty check payable to "Susan Davia" (Memo line "Prop 65 Penalties, 2016-
16 00938") in the amount of \$750; and
- 17 3. an attorney fee and cost reimbursement check payable to "Sheffer Law Firm" (Memo
18 line "2016-00938") in the amount of \$26,500.

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

21 Sheffer Law Firm
22 Attn: Proposition 65 Controller
23 81 Throckmorton Ave., Suite 202
24 Mill Valley, CA 94941

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

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

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

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

7 **4.5 Issuance of 1099 Forms**

8 After this Agreement has been fully executed and funds have been transmitted to Davia's
9 counsel at the address set forth in Section 4.4., E&E or its agents shall cause three separate 1099
10 forms to be issued, as follows:

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

14 (b) The second 1099 shall be issued to Davia in the amount paid pursuant to
15 Sections 4.1 and 4.2 (if any), whose address and tax identification number shall be
16 provided to E&E prior to any payments being due under this Agreement; and

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

19 **5. RELEASES**

20 **5.1 DAVIA'S RELEASE OF E&E AND JLA**

21 **5.1.1** This Consent Judgment is a full, final and binding resolution between Davia,
22 on behalf of herself and the public interest, and E&E, of any actual or alleged violation of
23 Proposition 65 that was or could have been asserted by Davia on behalf of herself, and her
24 representatives, attorneys, and the public interest, against E&E, all of its dbas, including OLLIIX,
25 Designer Living, JLA, JLA Home, JLA Furniture, JLA Pets, JLA Art, JLA Fabric, ART IN MOTION
26 (the "dbas"), and each of their directors, officers, employees, attorneys, parents, subsidiaries,
27 affiliates, and each entity to whom E&E or its dbas directly or indirectly distributed or sold Covered
28

1 Products with Covered Packaging, including, but not limited to, downstream distributors, retailers,
2 licensees, and private label customers, including but not limited to Bed Bath & Beyond Inc., Liberty
3 Procurement Company, Inc., Macy's Merchandising Group, Inc., MSLO, Inc., Macy's West Stores,
4 Inc., Sequential Brands Group, and Macy's Inc. (collectively "Releasees"), based on their alleged
5 failure to warn about alleged exposures to the Listed Chemical contained in the Covered Products
6 and/or Covered Packaging that were manufactured, distributed, or sold by E&E or its dbas to a
7 California Customer before the Effective Date. E&E's compliance with the terms of this Agreement
8 shall constitute compliance with Proposition 65 as to actual or alleged exposures to DINP, DIDP,
9 DEHP, DBP, BBP and DnHP in the Covered Products and Covered Packaging.

10 **5.1.2** Davia on behalf of herself and her agents, representatives, attorneys, successors,
11 and/or assignees, also provides a general release and waiver which shall be effective as a full and
12 final accord and satisfaction, and as a bar to all claims, actions and causes of action, of any nature,
13 character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of
14 or related to the Covered Products and Covered Packaging, to the extent sold or distributed by E&E
15 and its dbas prior to the Effective Date, and for all actions taken and statements made (or that could
16 have been taken or made) by E&E and its attorney's and other representatives in connection with
17 negotiating this Agreement. Davia acknowledges that she is familiar with section 1542 of the
18 California Civil Code, which provides as follows:

19
20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
21 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
22 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
23 EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR
24 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
25 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

26 Davia, in her individual capacity, on behalf of herself and her agents, representatives,
27 attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and
28 benefits that she may have under, or which may be conferred on her 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 she may lawfully waive such rights or benefits

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

4 This Section 5 release shall not release any obligations created by or set forth in this
5 Agreement. The Parties further understand and agree that this Section 5 release shall not extend
6 upstream to any entities, other than E&E and its dbas, that manufactured any Covered Packaging,
7 Covered Product, or any component parts thereof, or any distributors or suppliers who sold
8 Covered Packaging, Covered Products, or any component parts thereof to E&E and its dbas.

9 **5.2 E&E'S RELEASE OF DAVIA**

10 E&E and its dbas, on behalf of themselves and their agents, representatives, attorneys,
11 successors, and/or assignees, hereby waive any and all claims against Davia and her attorneys and
12 other representatives, for any and all actions taken or statements made (or those that could have
13 been taken or made) by Davia and her attorneys and other representatives arising out of the subject
14 matter of the Notice, the Covered Products, and the Covered Packaging, whether in the course of
15 investigating claims in this matter, otherwise seeking to enforce Proposition 65 against E&E and the
16 Releasees in this matter, or negotiating this Agreement. E&E and its dbas acknowledge that they are
17 familiar with Section 1542 of the California Civil Code, which provides as follows:

18
19 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
20 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR
21 SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
22 EXECUTING THE RELEASE, AND THAT IF KNOWN BY HIM OR
23 HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER
24 SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

25 E&E and its dbas expressly waive and relinquish any and all rights and benefits which they
26 may have under, or which may be conferred on them by the provisions of Section 1542 of the
27 California Civil Code as well as under any other state or federal statute or common law principle of
28 similar effect, to the fullest extent that they may lawfully waive such rights or benefits pertaining to
the released matters identified in this Section 5.2. In furtherance of such intention, the release hereby

1 given shall be and remain in effect as a full and complete release notwithstanding the discovery or
2 existence of any such additional or different claims or facts arising out of the released matters.

3 This Section 5 release shall not release any obligations created by or set forth in this
4 Agreement.

5 **6. COURT APPROVAL**

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

15 **7. SEVERABILITY**

16 If, subsequent to court approval of this Consent Judgment, any of the provisions of this
17 Agreement are determined by a court to be unenforceable, the validity of the enforceable provisions
18 remaining shall not be adversely affected if all Parties so agree, unless the Court finds that any
19 unenforceable provision is not severable from the remainder of the Agreement.

20 **8. GOVERNING LAW**

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

22 **9. NOTICES**

23 When any Party is entitled to receive notice under this Agreement, the notice shall be sent by
24 FedEx (or other tracked delivery service) or electronic mail to the following:

25
26 For E&E:

27 Jude Anthony
28 Director of Legal Affairs

1 E&E Co. Ltd.
2 JLA Home, Inc.
3 45875 Northport Loop East
4 Fremont, CA 94538-6414
5 jude.anthony@jlahome.com

6 With copy to its counsel at:

7 J. Robert Maxwell
8 Rogers Joseph O'Donnell PLC
9 311 California Street, 10th Fl.
10 San Francisco, CA 94104
11 jmaxwell@rjo.com

12 For Davia:

13 Proposition 65 Coordinator
14 Sheffer Law Firm
15 81 Throckmorton Ave., Suite 202
16 Mill Valley, CA 94941

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

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

20 Davia agrees to comply with the reporting form requirements of California Health & Safety
21 Code §25249.7(f).

22 **11. MODIFICATION**

23 This Consent Judgment may be modified only by written agreement of the Parties. Before
24 any Party may take action to enforce the terms of this Consent Judgment for alleged breach, that
25 Party must give the other Party written notice and a good faith opportunity to respond. The Parties
26 must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged
27 violation. If the alleged violation cannot be resolved, the Party alleging a violation may thereafter
28 move to enforce the terms of this Consent Judgment.

12. ADDITIONAL POST-EXECUTION ACTIVITIES

The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
is required to obtain judicial approval of this Consent Judgment, which motion Plaintiff shall
prepare and file. In furtherance of obtaining court approval, Davia and E&E, and their respective

1 counsel, agree to mutually employ their best efforts to support the entry of this Agreement as a
2 Consent Judgment and obtain approval of the Agreement by the Court in a timely manner.

3 E&E agrees to accept service of any notice of entry of order approving this Agreement or
4 entering judgment on this Agreement by electronic mail delivery.

5 **13. ENTIRE AGREEMENT**

6 This Consent Judgment contains the sole and entire agreement and understanding of the
7 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
8 negotiations, commitments, and understandings related hereto. No representations, oral or
9 otherwise, express or implied, other than those contained herein have been made or relied on by any
10 Party hereto (other than the sales figures provided to Davia). No other agreements not specifically
11 referred to herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No
12 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
13 unless executed in writing by the Party to be bound. No waiver of any of the provisions of this
14 Consent Judgment shall be deemed or shall constitute a waiver of any of the other provisions
15 whether or not similar, nor shall such waiver constitute a continuing waiver

16 **14. ATTORNEY'S FEES**

17 **14.1** In any dispute concerning any matter related to this Consent Judgment, the
18 prevailing Party shall be entitled to recover its reasonable costs and expenses, including its
19 reasonable attorneys' fees and costs. Except as otherwise specifically provided herein, each Party
20 shall bear its own costs and attorney's fees in connection with the Notices, the Complaint, and this
21 Consent Judgment. Nothing in this Section shall preclude a Party from seeking an award of
22 sanctions pursuant to law.

23 **15. NEUTRAL CONSTRUCTION**

24 Both Parties and their counsel have participated in the preparation of this Consent Judgment
25 and this Consent Judgment is the result of the joint efforts of the Parties. This Consent Judgment
26 was subject to revision and modification by the Parties and has been accepted and approved as to its
27 final form by each of the Parties. Accordingly, any uncertainty or ambiguity existing in this Consent
28 Judgment shall not be interpreted against any Party as a result of the manner of the preparation of

1 this Agreement. Each Party to this Consent Judgment agrees that any statute or rule of construction
2 providing that ambiguities are to be resolved against the drafting Party should not be employed in
3 the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil
4 Code Section 1654. The Parties further agree that the section headings are for convenience only and
5 shall not affect interpretation of this Consent Judgment.

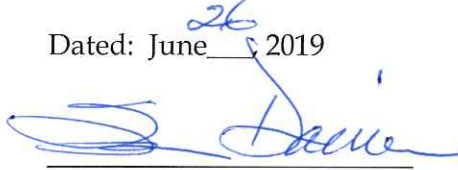
6 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

7 This Consent Judgment may be executed in counterparts and by facsimile or portable
8 document format (PDF), each of which shall be deemed an original, and all of which, when taken
9 together, shall constitute one and the same document. Signatures by scanned and e-mailed image or
10 facsimile transmission shall have the same force and effect as original signatures and as an electronic
11 record executed and adopted by a Party with the intent to sign the electronic record pursuant to
12 Civil Code §§ 1633.1 *et seq.*

13 **17. AUTHORIZATION**

14 Each of the persons signing this Agreement represents and warrants that he or she is
15 authorized and has the capacity to execute this Agreement on behalf of their respective Party and
16 has read, understood, and agrees to all of the terms and conditions of this Agreement on behalf of
17 such Party.

18 **IT IS SO AGREED**

19 20 Dated: June __, 2019 21 22 _____ Edmund Jin, Principal 23 E&E Co. Ltd.	20 Dated: June ²⁶ 2019 21 22  23 Susan Davia
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18 **IT IS SO AGREED**

20 Dated: June <u>27</u> , 2019 21  22 _____ Edmund Jin, Principal E&E Co. Ltd.	Dated: June __, 2019 _____ Susan Davia
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