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7

**FILED**

**MAR 26 2021**

**JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT**

**By: J. Berg, Deputy**



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 HALLMART COLLECTIBLES, INC.,  
16 MACY'S MERCHANDISING GROUP, INC.,  
17 MACY'S WEST STORES, INC., MACY'S INC.  
18 and DOES 1-150,

19 Defendants.  
20  
21  
22  
23  
24  
25  
26  
27  
28

Case No. CIV1903328

**ORDER APPROVING PROPOSITION 65  
SETTLEMENT AS TO DEFENDANT  
HALLMART COLLECTIBLES, INC.**

**MAR 26 2021**

Date:

Time: 1:30 PM

Judge: Hon. Andrew E. Sweet

Dept.: E

Action Filed: August 30, 2019

Trial Date: None Assigned

1 Plaintiff Susan Davia and defendant Hallmart Collectibles, Inc. have agreed through their  
2 respective counsel that their settlement agreement be approved in this Proposition 65 action. After  
3 consideration of the papers submitted and the arguments presented, the Court finds that the  
4 settlement set out in the attached Settlement Agreement and Stipulation to Judgment meets the  
5 criteria established by California Health & Safety Code section 25249.7, in that:  
6

- 7
- 8 1. Defendant's agreement to reformulate all vinyl components of the  
9 covered products, provide interim clear and reasonable warnings on such  
10 products obtained by defendant before reformulation and notify  
11 downstream customers of the need for Proposition 65 warnings on  
12 remaining inventory, all as required by specific terms of the Settlement  
13 Agreement, complies with Proposition 65;
  - 14 2. Defendant's agreement to reimburse plaintiff the amount of \$32,500 of  
15 attorneys' fees and costs pursuant to the Settlement Agreement is  
16 reasonable under California law; and
  - 17 3. based on the criteria set forth in Health & Safety Code § 25249.7(b)(2),  
18 Defendant's payment of \$4,000 as a civil penalty is reasonable.

19 The Court therefore approves the settlement as set forth in the Settlement Agreement.

20 **IT IS SO ORDERED.**

21  
22 Dated: MAR 26 2021

**ANDREW E. SWEET**

\_\_\_\_\_  
Honorable Andrew E. Sweet  
Judge Of The Superior Court

# EXHIBIT A

1 Gregory M. Sheffer, State Bar No. 173124  
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4 Attorneys for Plaintiff  
5 SUSAN DAVIA

6  
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,

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14 HALLMART COLLECTIBLES, INC.,  
15 MACY'S MERCHANDISING GROUP, INC.,  
MACY'S WEST STORES, INC., MACY'S INC.  
and DOES 1-150,

16 Defendants.  
17

Case No. CIV1903328

**CONSENT TO JUDGMENT SETTLEMENT  
AGREEMENT**

Action Filed: August 30, 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 plaintiff Susan Davia (“Davia”), on the one hand, and defendants  
5 Hallmart Collectibles, Inc. (“Hallmart”), Macy’s Merchandising Group, Inc., Macy’s West Stores,  
6 Inc. and Macy’s Inc. (collectively “Macy’s”), on the other hand, with Davia, Hallmart and Macy’s  
7 collectively referred to as the “Parties.”

8 **1.2 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 Hallmart & Macy’s**

13 Each Hallmart and Macy’s is a person in the course of doing business for purposes of the  
14 Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§  
15 25249.6 *et seq.* (“Proposition 65”).

16 **1.4 General Allegations**

17 Davia alleges that Hallmart and Macy’s participated in the manufacture, distribution  
18 and/or sale, in the State of California, of Hallmart Collectibles, Inc. textile bedding products with  
19 packaging and storage cases including vinyl/PVC components made with materials that exposed  
20 users to di(2-ethylhexyl)phthalate (“DEHP”) and diisononyl phthalate (“DINP”) without first  
21 providing a “clear and reasonable warning” under Proposition 65. DEHP is listed as a carcinogen  
22 and reproductive toxin pursuant to Proposition 65. DINP is listed as a carcinogen pursuant to  
23 Proposition 65. DEHP and DINP shall hereafter collectively be referred to hereinafter as the “Listed  
24 Chemical.”

25 **1.5 Notice of Violation**

26 On July 6, 2017, Davia served Hallmart, Macy’s and various requisite public enforcement  
27 agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers and  
28 the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to

1 warn consumers of the presence of the Listed Chemical found in the Covered Products (defined  
2 hereafter) sold in California (AG Notice 2017-01685). The July 6, 2017, 60-Day Notice of Violation  
3 served on Hallmart and Macy's shall be referred to herein as the "Notice."

4 Hallmart and Macy's received the Notice. The Parties represent that, as of the date this  
5 Agreement is executed, to the best of their knowledge, no public enforcer has commenced or is  
6 diligently prosecuting a Proposition 65 enforcement action against Hallmart or Macy's related to  
7 the Listed Chemical in the Covered Products, as identified in the Notice.

#### 8 **1.6 Complaint**

9 On August 30, 2019, Davia filed a Complaint in the Superior Court of the State of California  
10 for the County of Marin, Case No. CIV1903328, alleging violations by Hallmart and Macy's of  
11 Health and Safety Code § 25249.6 based on the alleged exposures to the Listed Chemical in the  
12 Covered Products (the "Action").

#### 13 **1.7 No Admission**

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

#### 27 **1.8 Consent to Jurisdiction**

28 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior

1 Court has jurisdiction over Hallmart and Macy's as to the allegations in the Notice received from  
2 Davia, and this Agreement and that venue is proper in County of Marin. The Parties further  
3 stipulate that this Agreement shall be deemed made pursuant to Code of Civil Procedure Section  
4 664.6, and that the Marin County Superior Court has jurisdiction over the parties to enforce the  
5 Agreement until performance in full of its terms.

## 6 **2. DEFINITIONS**

7 **2.1** The term "Product" or "Covered Product" shall mean all Hallmart Collectibles,  
8 Inc. Multi-piece comforter sets, including, but not limited to Amanda Series 3-Piece Comforter  
9 Set (all sizes). The term "Covered Packaging" shall mean all vinyl/PVC product packaging or  
10 storage cases in which Covered Products are sold to consumers.

11 **2.2** The term "Phthalate Free" Covered Packaging shall mean that each vinyl  
12 component of each Covered Packaging contains less than or equal to 1,000 parts per million  
13 ("ppm") of di(2-ethylhexyl phthalate) ("DEHP"), dibutyl phthalate ("DBP"), diisononyl  
14 phthalate ("DINP"), diisodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP") and butyl  
15 benzyl phthalate ("BBP") as determined test results using Environmental Protection Agency  
16 ("EPA") testing methodologies 3580A and 8270C.

17 **2.3** "Effective Date" shall mean May 15, 2018.

18 **2.4** The term "California Customer" shall mean shall mean any customer located in  
19 California, any customer with a California ship to address, any customer that Hallmart reasonably  
20 understands operates a retail store in California and any ecommerce customer that Hallmart  
21 reasonably understands sells to consumers in California.

## 22 **3. INJUNCTIVE RELIEF**

### 23 **3.1 Product Reformulation Commitment**

24 **3.1.1** No later than the Effective Date, Hallmart shall provide the Phthalate Free  
25 phthalate concentration standards of Section 2.2 to its then-current vendors of any Covered  
26 Product or Covered Packaging and instruct such entities not to incorporate any raw or  
27 component materials that do not meet the Phthalate Free concentration standards of Section 2.2  
28 into any Covered Packaging. Hallmart shall maintain copies of all vendor correspondence

1 relating to the Phthalate Free concentration standards for two (2) years after the Effective Date  
2 and shall produce such copies to Davia within fifteen (15) days of receipt of reasonable request  
3 made in writing from Davia.


4       **3.1.2** After the Effective Date, Hallmart shall provide the Phthalate Free phthalate  
5 concentration standards of Section 2.2 to any New Vendors of any Covered Product or Covered  
6 Packaging and instruct such entities not to incorporate any raw or component materials that do  
7 not meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product.  
8 “New Vendors” means vendors of Covered Products or Covered Packaging from whom  
9 Hallmart was not obtaining Covered Products or Covered Packaging as of the Effective Date.  
10 Prior to purchase and acquisition of any Covered Product or Covered Packaging from any New  
11 Vendor, Hallmart shall obtain a written confirmation and accompanying laboratory test result  
12 from the New Vendor demonstrating compliance with the Phthalate Free phthalate  
13 concentration standard in all materials comprising the Covered Packaging. For two (2) years  
14 after the Effective Date, for every Covered Packaging Hallmart manufactures, causes to be  
15 manufactured, orders, causes to be ordered or otherwise obtains as part of a Covered Product,  
16 from a New Vendor after the Effective Date, Hallmart shall maintain copies of all testing of such  
17 Covered Packaging demonstrating compliance with this section, shall maintain copies of all  
18 vendor correspondence relating to the Phthalate Free concentration standards and shall produce  
19 such copies to Davia within fifteen (15) days of receipt of reasonable request made in writing  
20 from Davia.

21       **3.1.3** As of June 15, 2018, Hallmart shall not manufacture, cause to be manufactured,  
22 order or cause to be ordered any Covered Product with Covered Packaging that is not Phthalate  
23 Free. For every Covered Product with Covered Packaging Hallmart manufactures, causes to be  
24 manufactured, orders, causes to be ordered or otherwise obtains after the Effective Date,  
25 Hallmart shall maintain copies of all testing of such products or packaging demonstrating  
26 compliance with this section, shall maintain copies of all vendor correspondence relating to the  
27 Phthalate Free concentration standards of Section 2.2 and shall produce such copies to Davia  
28 within fifteen (15) days of receipt of reasonable request made in writing from Davia.




1           **3.2**     Previously Distributed Covered Products.

2           **3.2.1**   Customer Notification - No later than the Effective Date, Hallmart shall send a  
3 letter, electronic or otherwise (“Notification Letter”) to: (1) each retailer or distributor in  
4 California to which it, after January 1, 2017, supplied any Covered Product in Covered  
5 Packaging, (2) each retailer or distributor with bedding product customers in California to which  
6 it, after January 1, 2017, supplied any Covered Product in Covered Packaging and (3) any other  
7 retailer or distributor in California that Hallmart reasonably understands or believes has any  
8 inventory of Covered Products. The Notification Letter shall advise the recipient that Covered  
9 Packaging for Covered Products contains DEHP and DINP, chemicals known to the State of  
10 California to cause cancer and birth defects or other reproductive harm. The Notification letter  
11 shall direct recipient that all Covered Packaging must either have a label attached to the  
12 packaging or on a shelf sign proximate to the display of Covered Product, expressly referring to  
13 the Covered Product, which label or sign contains one of the following warnings, before it is sold  
14 in the California market or to a California customer. The Notification Letter shall include a sheet  
15 of white background, adhesive Proposition 65 Warning stickers with the following warning in  
16 no less than Book Antiqua, point 9 font (or its equivalent):

17  
18                    **WARNING** The vinyl packaging for this product can  
19                                   expose you to chemicals, including DEHP  
20                                   and DINP, that are known to the State of  
21                                   California to cause cancer and birth defects  
22                                   or other reproductive harm. For more  
23                                   information go to  
24                                   [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov);

25                   or

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

29 The Notification Letter shall be sent with return receipt requested. The Notification Letter shall  
30 request written confirmation from the recipient, within 15 days of receipt, that all such inventory

1 for California sale has been, or will be, labelled with the warning language identified in this  
2 section.


3       **3.2.2** Hallmart shall maintain records of compliance correspondence, inventory reports  
4 or other communication confirming compliance with § 3.2.1 for three (3) years from the Effective  
5 Date and shall produce copies of such records upon written request by Davia.

6       **3.3 Existing Inventory Product Packaging Labels**


7       For any inventory of Covered Products obtained by Hallmart prior to June 15, 2018,  
8 Hallmart shall not sell or ship any of such Covered Product unless Hallmart has complied with  
9 all warning requirements set forth hereafter. Each warning communicated by Hallmart for any  
10 Covered Packaging shall be communicated in such a way as to render it likely to be read and  
11 understood by an ordinary individual under customary conditions *before* purchase or use.

12       **3.3.1 Covered Packaging Label.**

13       For all Covered Products in non-Phthalate Free Covered Packaging sold into California,  
14 to a California customer or to any entity that Hallmart has reason to know either maintains retail  
15 outlets in California or is a distributor for any entity that maintains retail outlets in California,  
16 Hallmart shall affix a label to the Covered Packaging with one of the following warning  
17 statements:

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

26  
27       or

28        **WARNING**

for the vinyl packaging in which this  
product is sold – Cancer and Reproductive  
Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

The label shall be prominently affixed, either on the front, exterior surface of the clear packaging or where other health and safety warnings are located, 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.

### 3.3.2 Internet Website Warning.

A warning must be given in conjunction with the sale of any Covered Product in non-Phthalate Free Covered Packaging by Hallmart via the Internet, provided it appears either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The following warning statement shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Covered Product for which it is given in the same type size or larger than the Covered Product description text:



**WARNING** The vinyl packaging for this product can expose you to chemicals, including DEHP and DINP, 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](http://www.P65Warnings.ca.gov);

or, only for Covered Product with Covered Packaging including the warning statement on the Covered Packaging itself,



**WARNING** for the vinyl packaging in which this product is sold – Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

Alternatively, a designated symbol may appear adjacent to or immediately following the display, description, or price of the Covered Product for which a warning is being given,

provided that the following warning statement also appears elsewhere on the same web page, as follows:



**WARNING** Products identified on this page with the following symbol ▼ include vinyl packaging that can expose you to chemicals, including DEHP and DINP, 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](http://www.P65Warnings.ca.gov);

or only for a Covered Product with Covered Packaging including the warning statement on the Covered Packaging itself,



**WARNING** For products identified on this page with the following symbol ▼ - Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

#### **4. MONETARY PAYMENTS**

##### **4.1 Civil Penalty**

As a condition of settlement of all the claims referred to in this Agreement, Hallmart shall pay a total of \$4,000 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1) & (d).

##### **4.2 Augmentation of Penalty Payments**

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon Hallmart and its counsel for accurate, good faith reporting to Davia of the nature and amounts of relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents to Hallmart evidence that the Covered Products have been distributed by Hallmart in sales volumes materially different (more than 20%) than those identified by Hallmart prior to execution of this Agreement, then Hallmart shall be liable for an additional penalty amount of \$10,000.00. Hallmart shall also be liable, in accordance with the requirements of Code of Civil Procedure section 1021.5 for any reasonable, additional attorney fees expended

1 by Davia in discovering such additional retailers or sales. Davia agrees to provide Hallmart  
2 with a written demand for all such additional penalties and attorney fees under this Section.  
3 After service of such demand, Hallmart shall have thirty (30) days to agree to the amount of fees  
4 and penalties owing by Hallmart and submit such payment to Davia in accordance with the  
5 method of payment of penalties and fees identified in Section 4.1 and 4.4. Should this thirty (30)  
6 day period pass without any such resolution between the parties and payment of such  
7 additional penalties and fees, Davia shall be entitled to file a formal legal claim for additional  
8 civil penalties pursuant to this Section and shall be entitled to all reasonable attorney fees and  
9 costs, in accordance with the requirements of Code of Civil Procedure section 1021.5, relating to  
10 such claim.

#### 11 **4.3 Reimbursement of Davia's Fees and Costs**

12 The Parties acknowledge that Davia and her counsel declined to consider any  
13 reimbursement of plaintiff's fees or costs until all other terms of the settlement were reached. The  
14 Parties then reached an accord on the reimbursement due to Davia and compensation of her  
15 counsel under general contract principles and consistent with the private attorney general doctrine  
16 codified at California Code of Civil Procedure section 1021.5. Under these legal principles,  
17 Hallmart shall pay Davia's counsel the amount of \$32,500 for fees and costs incurred investigating,  
18 litigating and enforcing this matter.

#### 19 **4.4 Payment Procedures**

20 No later than fifteen (15) days after execution of this Agreement, Hallmart shall deliver all  
21 settlement payment funds required by this Agreement to its counsel. Within one (1) week of  
22 receipt of the settlement funds, Hallmart' counsel shall confirm receipt in writing to plaintiff's  
23 counsel and, thereafter, hold Hallmart' settlement checks or payment(s) until such time as the Court  
24 approves this settlement as contemplated by Section 6. Within five (5) business days of the date  
25 plaintiff provides electronic mail notice to counsel for Hallmart that the Court has approved this  
26 settlement, Hallmart' counsel shall deliver the settlement payments to plaintiff's counsel as follows:

27 a civil penalty check payable to "OEIHA" (Memo line "Prop 65 Penalties, 2018-02198"), in  
28 the amount of \$3,000;

1 a civil penalty check payable to "Susan Davia" (Memo line "Prop 65 Penalties, 2018-02198")  
2 in the amount of \$1,000; and

3 an attorney fee and cost reimbursement check payable to "Sheffer Law Firm" (Memo line  
4 "2018-02198") in the amount of \$32,500.

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

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

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

13 Sheffer Law Firm  
14 Attn: Proposition 65 Controller  
232 E. Blithedale Ave., Suite 210  
Mill Valley, CA 94941

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

#### 18 **4.5 Issuance of 1099 Forms**

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

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

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

26 (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in the  
27 amount paid pursuant to Section 4.2 and Section 4.3.  
28

1           **4.6           Delayed or Non-Payment of Civil Penalties or Attorney Fees**

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

5           **5.           RELEASES**

6           **5.1           Davia's Release of Hallmart And Macy's**

7           **5.1.1** This settlement agreement is a full, final and binding resolution between Davia,  
8 Hallmart, of any violation of Proposition 65 that was or could have been asserted by Davia on  
9 behalf of herself, her representatives or attorneys, against Hallmart, its directors, officers,  
10 employees and attorneys ("Releasees"), based on their failure to warn about alleged exposures to  
11 any Listed Chemical contained in the Covered Products that were sold by Hallmart in California  
12 before the Effective Date. As to Davia only, Hallmart's compliance with the terms of this  
13 Agreement shall constitute compliance with Proposition 65 as to exposures to DINP, DIDP, DEHP,  
14 DBP, BBP and DnHP in the Covered Products.

15           **5.1.2** In further consideration of the promises and agreements herein contained, Davia on  
16 behalf of herself, her past and current representatives and attorneys, hereby waives all Davia's  
17 rights to institute or participate in, directly or indirectly, any form of legal action and releases all  
18 claims that Davia may have, including, without limitation, all actions, and causes of action, in law  
19 or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or  
20 expenses -- including, but not limited to, investigation fees, expert fees, and attorneys' fees, but  
21 exclusive of fees and costs on appeal -- limited to and arising under proposition 65 with respect to  
22 the Listed Chemical in the Covered Products sold by Hallmart before the Effective Date  
23 (collectively "claims"), against Hallmart and Releasees.

24           **5.1.3** Davia also, in her individual capacity, provides a general release herein which shall  
25 be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,  
26 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of  
27 Davia, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out  
28 of the subject matter of the Notice as to Covered Products sold by Hallmart or Releasees before the

1 Effective Date. Davia acknowledges that she is familiar with section 1542 of the California civil  
2 code, which provides as follows:

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

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

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

22 The Parties further understand and agree that this Section 5.1 release shall not extend  
23 upstream to any entities, other than Hallmart, that manufactured the Covered Products or any  
24 component parts thereof, or any distributors or suppliers who sold the Covered Products or any  
25 component parts thereof to Hallmart.

## 26 **5.2 Hallmart's and Macy's Release of Davia**

27 Hallmart and Macy's, each on behalf of itself, its past and current agents, representatives,  
28 attorneys, successors, and/or assignees, hereby waives any and all claims against Davia and her  
attorneys and other representatives, for any and all actions taken or statements made (or those that  
could have been taken or made) by Davia and her attorneys and other representatives, whether in



1 the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this  
2 matter, or with respect to the Products. Hallmart and Macy's each acknowledges that it is familiar  
3 with Section 1542 of the California Civil Code, which provides as follows:

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

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

## 18 **6. COURT APPROVAL**

19 This Agreement is effective upon execution but must also be approved by the Court. If the  
20 Court does not approve this Agreement 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 negotiate in good faith in an effort to reach agreement  
23 on any actions reasonably necessary to amend and/or modify this Agreement in order to further  
24 the mutual intention of the Parties in entering into this Agreement. The Agreement shall become  
25 null and void if, for any reason, it is not approved and entered by the Court, as it is executed,  
26 within one year after it has been fully executed by all Parties. The Parties agree that, upon Court  
27 approval, a Court judgment shall be entered on the terms of this Agreement.

## 28 **7. SEVERABILITY**

If any of the provisions of this Agreement are found by a court to be unenforceable, the  
validity of the enforceable provisions remaining shall not be adversely affected, unless the Court

finds that any unenforceable provision is not severable from the remainder of the Agreement.

**8. GOVERNING LAW**

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

**9. NOTICES**

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

For Hallmart & Beyond, Inc. and Liberty Procurement Company, Inc., to:

**For Hallmart:**

Jesse Ghalili, CEO  
Hallmart Collectibles, Inc.  
11684 Venture Blvd., Suite 953  
Studio City, CA 91604

With a copy to their counsel:

David Roth, Esq.  
Manning & Kass, Ellrod, Ramirez, Trester LLP  
801 South Figueroa St., 15th Floor  
Los Angeles, CA 90017  
[dvr@manningllp.com](mailto:dvr@manningllp.com)

**For Davia:**

Proposition 65 Coordinator  
Sheffer Law Firm  
232 E. Blithedale Ave., Suite 210  
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.

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

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

**11. MODIFICATION**

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

1 **12. ENTIRE AGREEMENT**

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

11 **13. ATTORNEY'S FEES**

12 **13.1** Should Davia prevail on any motion, application for order to show cause or other  
13 proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable  
14 attorney fees and costs incurred as a result of such motion, order or application, consistent with  
15 C.C.P. § 1021.5. Should Hallmart prevail on any motion, application for order to show cause or  
16 other proceeding to enforce a violation of this Agreement, Hallmart may be entitled to its  
17 reasonable attorney fees and costs incurred as a result of such motion, order or application upon a  
18 finding that Davia's prosecution of the motion or application lacked substantial justification. For  
19 purposes of this Agreement , the term substantial justification shall carry the same meaning as used  
20 in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016, *et seq.*

21 **13.2** Except as otherwise specifically provided herein, each Party shall bear its own  
22 costs and attorney's fees in connection with the Notice.

23 **13.3** Nothing in this Section shall preclude a Party from seeking an award of sanctions  
24 pursuant to law.

25 **14. NEUTRAL CONSTRUCTION**

26 Both Parties and their counsel have participated in the preparation of this Agreement and  
27 this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to  
28 revision and modification by the Parties and has been accepted and approved as to its final form by

1 all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement  
2 shall not be interpreted against any Party as a result of the manner of the preparation of this  
3 Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing  
4 that ambiguities are to be resolved against the drafting Party should not be employed in the  
5 interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code  
6 Section 1654.


7 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

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

11 **16. AUTHORIZATION**

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

14 **IT IS SO AGREED**

<p>15</p> <p>16 Dated: December __, 2020</p> <p>17</p> <p>18 _____</p> <p>19 Jesse Ghalili, CEO</p> <p>20 Hallmart Collectibles, Inc.</p>	<p>16 Dated: December <u>24</u>, 2020</p> <p>17</p> <p>18 </p> <p>19 Susan Davia</p>
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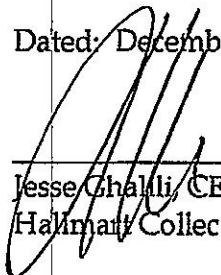
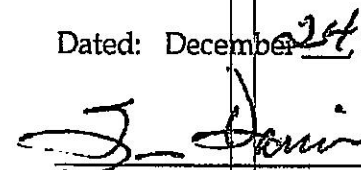
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