

PROPOSITION 65 SETTLEMENT AGREEMENT
(Susan Davia AG Notice 2016-00932)

1. INTRODUCTION

1.1 The Parties

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Susan Davia, (“Davia”) and Berkshire Blanket (“Berkshire Blanket” or “Defendant”), with Davia and Berkshire Blanket collectively referred to as the “Parties.”

1.2 Davia

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

1.3 Berkshire Blanket

Berkshire Blanket is alleged to have been responsible for the manufacture and distribution of the products subject to this Agreement. Berkshire Blanket is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”).

1.4 General Allegations

Davia alleges that Berkshire Blanket participated in the manufacture, distribution and/or sale, in the State of California, PVC product display and storage cases made with materials that exposed users to DEHP without first providing “clear and reasonable warning” under Proposition 65. DEHP is listed as a carcinogen and reproductive toxin pursuant to Proposition 65. DEHP shall be referred to hereinafter as the “Listed Chemical”.

1.5 Notices of Violation

On August 25, 2016, Davia served Berkshire Blanket and various public enforcement agencies with a document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEP, a toxic chemical found in the Covered Products sold in

California (AG Notice 2016-00932). The August 25, 2016, 60-Day Notice of Violation shall be referred to herein as "Notice."

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

1.6 No Admission

This Agreement resolves claims that are denied and disputed by Berkshire Blanket. The Parties enter into this Agreement pursuant to a full, final and binding settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Berkshire Blanket denies the material factual and legal allegations contained in the Notices, maintains that it did not knowingly or intentionally expose California consumers to DEHP through the reasonably foreseeable use of the Covered Products and otherwise contends that, all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission by Berkshire Blanket of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Berkshire Blanket of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Berkshire Blanket. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Berkshire Blanket's obligations, responsibilities, and duties under this Agreement.

1.7 Consent to Jurisdiction

This settlement agreement shall be construed as being entered into pursuant to Code of Civil Procedure Section 664.6. For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over the Parties to enforce the provisions of this Agreement.

2. DEFINITIONS

2.1 The term “Product” or “Covered Product” shall mean all Berkshire Blanket product packaging/storage cases made with vinyl/PVC, including those cases for Berkshire Blanket Plush and Fleece Blankets (including, but not limited to, Velvet Loft Blankets) and any other blanket, throw, pillow, sheet or other bedding product.

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

2.3 “Effective Date” shall mean June 16, 2017.

3. INJUNCTIVE-TYPE RELIEF

3.1 Product Reformulation Commitment

3.1.1 No later than the Effective Date, Berkshire Blanket shall provide the Phthalate Free phthalate concentration standards of Section 2.2 to its then-current vendors of any Covered Product and instruct such entities not to incorporate any raw or component materials that do not meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product. Berkshire Blanket shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards for two (2) years after the Effective Date and shall produce such copies to Davia within fifteen (15) days of receipt of reasonable request made in writing from Davia, as long as such request is made within two (2) years after the Effective Date.

3.1.2 After the Effective Date, Berkshire Blanket shall provide the Phthalate Free phthalate concentration standards of Section 2.2 to any New Vendors of any Covered Product and instruct such entities not to incorporate any raw or component materials that do not meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product. “New Vendors” means vendors

of Covered Products from whom Berkshire Blanket was not obtaining Covered Products as of the Effective Date. Prior to purchase and acquisition of any Covered Product from any New Vendor, Berkshire Blanket shall obtain a written confirmation and accompanying laboratory test result from the New Vendor demonstrating compliance with the Phthalate Free phthalate concentration standard in all materials comprising the Covered Product. For two (2) years after the Effective Date, for every Covered Product Berkshire Blanket manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from a New Vendor after the Effective Date, Berkshire Blanket shall maintain copies of all testing of such products demonstrating compliance with this section, shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards and shall produce such copies to Davia within fifteen (15) days of receipt of reasonable request made in writing from Davia as long as such request is made within two (2) years after the Effective Date.

3.1.3 As of September 15, 2017, Berkshire Blanket shall not manufacture or cause to be manufactured, order or cause to be ordered, distribute or cause to be distributed or otherwise sell any Covered Product that is not Phthalate Free. For every Covered Product Berkshire Blanket manufactures, causes to be manufactured, orders, causes to be ordered or otherwise sells after the Effective Date, Berkshire Blanket shall maintain copies of all testing of such products demonstrating compliance with this section, shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards of Section 2.2 and shall produce such copies to Davia within fifteen (15) days of receipt of reasonable request made in writing from Davia, as long as such request is made within two (2) years after the Effective Date.

3.2 Previously Distributed Covered Products.

3.2.1 Customer Notification - No later than the Effective Date, Berkshire Blanket shall send a letter, electronic or otherwise ("Notification Letter") to (1) each retailer or distributor in California to which it, after July 1, 2016, supplied any Covered Product and (2) any other retailer or distributor in California that Berkshire Blanket reasonably understands or believes has any inventory of Covered Products. The Notification Letter shall advise the recipient that Covered

Products contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm. The Notification Letter shall include a sheet of white background, adhesive Proposition 65 Warning stickers with the following warning in no less than Book Antiqua, point 9 font (or its equivalent):

WARNING: This product contains DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm. *This packaging is not intended as a storage container. Please discard packaging after purchase.*

The Notification Letter shall be sent with return receipt requested.

3.2.2 Settling Defendant shall maintain records of compliance correspondence, inventory reports or other communication confirming compliance with § 3.2.1 for three (3) years from the issuance of the initial Notification Letter and shall produce copies of such records upon written request by Davia.

3.3 Existing Inventory Sales Limitation

For any inventory of Covered Products obtained by Berkshire Blanket prior to September 15, 2017, that is not confirmed to be Phthalate Free, Berkshire Blanket shall not sell or ship any of such Covered Product to a California customer or retailer, or to a customer or retailer that Berkshire Blanket has reason to know maintains retail outlets in the California.

4. MONETARY PAYMENTS

4.1 Civil Penalty

As a condition of settlement of all the claims referred to in this Consent to Judgment, Berkshire Blanket shall cause to be paid a total of \$8,000 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 Berkshire Blanket 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 Berkshire Blanket evidence that the Covered Products have been distributed by Berkshire Blanket to Bed, Bath and Beyond in sales volumes materially (more than 25%) different than those identified by Berkshire Blanket prior to execution of this Agreement, then Berkshire Blanket shall be liable for an additional penalty amount of \$10,000.00. Berkshire Blanket shall also be liable, in accordance with the requirements of Code of Civil Procedure section 1021.5 for any reasonable, additional attorney fees expended by Davia in discovering such additional retailers or sales. Davia agrees to provide Berkshire Blanket with a written demand for all such additional penalties and attorney fees under this Section, including Davia's evidence supporting any claim for a materially different sales volume. After service of such demand, Berkshire Blanket shall have thirty (30) days to agree to the amount of fees and penalties owing by Berkshire Blanket and submit such payment to Davia in accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim for additional civil penalties pursuant to this Section. The prevailing party on any claim filed pursuant to this section shall be entitled to its reasonable fees and costs.

4.3 Reimbursement of Davia's Fees and Costs

Davia has confirmed to Berkshire Blanket her willingness to execute a settlement on all terms except for reimbursement of plaintiff's fees and costs, leaving such issue for formal resolution independent of this Agreement. However, the Parties have reached an accord on the compensation due to Davia and her counsel under general contract principles and the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees that may be incurred on appeal. Under these legal principles, Berkshire Blanket shall cause to be paid to Davia's counsel the amount of \$28,900 for fees and costs incurred investigating, litigating and enforcing this matter. Such payment shall be made payable to "Sheffer Law Firm".

4.4 Payment Procedures

Berkshire Blanket shall satisfy its obligation to pay civil penalties pursuant to Section 4.1 by delivery of a civil penalty check payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2016-00932"), in the amount of \$6,000 and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2016-00932") in the amount of \$2,000. Davia shall be responsible for delivering to the California Office of Environmental Health Hazard Assessment the civil penalty check payable to OEHHA.

Berkshire Blanket shall satisfy its obligation to pay attorney fees and costs pursuant to Section 4.3 by delivery of a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2016-00932") in the amount of \$28,900.

Berkshire Blanket shall satisfy its obligation to pay any civil penalties pursuant to Section 4.2 by civil penalty checks payable to "OEHHA" and "Susan Davia" (Memo line "Prop 65 Penalties, 2016-00932"), in the amounts agreed to pursuant to Section 4.2 or as ordered by the Court.

Berkshire Blanket shall satisfy its obligation to pay any attorney fees or costs pursuant to Section 4.2 by a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2016-00932"), in the amounts agreed to pursuant to Section 4.2 or as ordered by the Court.

All Section 4.1 and Section 4.3 civil penalty and attorney fee/cost payments shall be delivered to plaintiff's counsel within five (5) business days after execution of this Agreement, at the following address:

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

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

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

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

4.5 Issuance of 1099 Forms

After this Agreement has been executed and the settlement funds have been transmitted to Davia's counsel, Berkshire Blanket shall cause three separate 1099 forms to be issued, as follows:

- (a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, 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 4.2, whose address and tax identification number shall be furnished upon request; and
- (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section 4.3 and 4.2.

5. RELEASES

5.1 DAVIA'S RELEASE OF BERKSHIRE BLANKET

5.1.1 This settlement agreement is a full, final and binding resolution between Davia, and Berkshire Blanket of any violation of Proposition 65 that was or could have been asserted by Davia on behalf of herself, her representatives or attorneys, against Berkshire Blanket, its directors, officers, employees, attorneys ("Releasees"), and each entity to whom Berkshire Blanket directly or indirectly distributes or sells Covered Products, including, but not limited, to Retailers, downstream distributors and retailers ("Downstream Releasees"), based on their alleged failure to warn about alleged exposures to DEHP contained in the Covered Products that were distributed or sold by Berkshire Blanket into California before execution of this Agreement. As to Davia only, Berkshire Blanket's compliance with the terms of this settlement shall be deemed compliance with

Proposition 65 as to exposures to DINP, DIDP, DEHP, DBP, BBP and DnHP in the Covered Products.

5.1.2 Davia also provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all claims, actions and causes of action, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice as to Covered Products sold by Berkshire Blanket or Releasees into California prior to the Effective Date. Davia acknowledges that she is familiar with section 1542 of the California civil code, which provides as follows:

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

Davia, in her individual capacity expressly waives and relinquishes any and all rights and 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 he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

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

The Parties further understand and agree that this Section 5 release shall not extend upstream to any entities, other than Berkshire Blanket, that manufactured the Covered Products or any component parts thereof, or any distributors or suppliers who sold the Covered Products or any component parts thereof to Berkshire Blanket.

5.2 BERKSHIRE BLANKET RELEASE OF DAVIA

Berkshire Blanket, 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 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 through the execution of this Agreement whether in the course of investigating claims in this matter, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Covered Products that were the subject of the Notices. Berkshire Blanket acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

Berkshire Blanket expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters identified in this Section 5.2. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement Berkshire Blanket may ask Davia, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested,

Davia agrees to reasonably cooperate with Berkshire Blanket and to use her best efforts, and that of her counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Berkshire Blanket will reimburse Davia and her counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$12,000.00, exclusive of fees and cost that may be incurred on appeal. Berkshire Blanket will remit payment to the Sheffer Law Firm, at the address set forth in Section 9 below. Such additional fees shall be paid by Berkshire Blanket, within ten days after its receipt of any invoice from Davia for work performed under this paragraph. Berkshire Blanket understands no motion to approve any proposed consent judgment will be filed absent payment for the work performed under this paragraph. All payments owed to Davia, pursuant to Section 6 shall be delivered to the following payment address:

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

Any failure by Berkshire Blanket to timely pay Davia invoices under this Section shall result in the assessment of ten percent (10%) interest on any outstanding balance.

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, after express agreement of the Parties, 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 FedEx (or other tracked delivery service) or electronic mail to the following:

For The Berkshire Blanket Corporation:

Bruce Stevens, CEO
Berkshire Blanket
44 East Main Street
Ware MA 01082

With a copy to their counsel:

Belynda Reck, Esq.
Reed Smith LLP
355 South Grand Avenue, Suite 2900
Los Angeles, CA 90071
breck@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.

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 or court order.

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

13. ATTORNEY'S FEES

13.1 Should either of the Parties prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, so long as that party engaged in a good faith meet and confer attempt regarding the dispute, such Party shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. § 1021.5.

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

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

14. NEUTRAL CONSTRUCTION

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

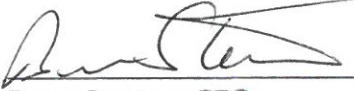
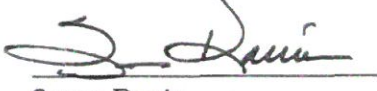
15. COUNTERPARTS, FACSIMILE SIGNATURES

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

16. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: June <u>9</u>, 2017</p> <p></p> <p>Bruce Stevens, CEO Berkshire Blanket</p>	<p>Dated: June <u>7</u>, 2017</p> <p></p> <p>Susan Davia</p>
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