

**PROPOSITION 65 SETTLEMENT AGREEMENT  
(Susan Davia AG Notice 2016-00930, 2016-00939)**

**1. INTRODUCTION**

**1.1 The Parties**

This Proposition 65 Settlement Agreement (Susan Davia AG Notice 2016-00930, 2016-00939) (“Agreement” or “Settlement Agreement”) is entered into by and between Susan Davia, (“Davia”) and Keeco, LLC (“Keeco”), with Davia and Keeco 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 Keeco**

Keeco is alleged to have been responsible for the manufacture and distribution of the products subject to this Agreement. Keeco 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”). In 2013 Keeco, LLC acquired Aeolus Down, Inc. (herein, "Keeco" means Keeco, LLC and Aeolus Down, Inc., jointly and severally).

**1.4 General Allegations**

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

**1.5 Notices of Violation**

On August 25, 2016, Davia served Keeco, LLC 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 DEHP and DINP found in the Covered Packaging sold in California (AG Notice 2016-00939).

On August 25, 2016, Davia served Keeco LLC and Aeolus Down, Inc. 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 DEHP found in the Covered Packaging sold in California (AG Notice 2016-00930).

The August 25, 2016, 60-Day Notices of Violation served on Keeco, LLC and Aeolus Down Inc. shall be referred to herein, collectively, as “Notices.”

Keeco received the Notices. Keeco 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 or DINP in the Covered Packaging, as identified in the Notices.

#### **1.6 No Admission**

This Agreement resolves claims that are denied and disputed by Keeco. The Parties enter into this Agreement to effect a full, final and binding settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Keeco denies the material factual and legal allegations contained in the Notices, maintains that it did not knowingly or intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered Packaging, and otherwise contends that all Covered Packaging it has 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 Keeco 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 Keeco of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Keeco. However, notwithstanding the foregoing, this Section shall not diminish or otherwise affect Keeco’ obligations, responsibilities, and duties under this Agreement.

#### **1.7 Consent to Jurisdiction**

For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over Keeco as to the allegations in the Notices received from Davia, and this Agreement, that venue is proper in the County of Marin, and that the Marin County Superior Court has jurisdiction to enforce the provisions of this Agreement. As an express part of this Agreement, the Parties stipulate that this Agreement shall constitute a written settlement pursuant to Code of Civil Procedure Section 664.6 and that the Marin County Superior Court has jurisdiction over the Parties to enforce the settlement until performance in full of the terms of this Agreement.

## **2. DEFINITIONS**

**2.1** The terms “Packaging” or “Covered Packaging” mean all vinyl/PVC bedding product packaging/storage cases caused to be manufactured, distributed or otherwise sold by Keeco, including those cases for The Big One Series Bed Sets (all sizes, including, but not limited to 8 Pc. bed sets such as Botanical Silhouette and Essential Mattress Pads (all sizes)) and The Seasons Collection Comforters (including, but not limited to Seasons Down Light Warmth, Year Round Warmth and Extra Warmth Comforters). Keeco has not manufactured and is not now manufacturing Covered Packaging.

**2.2** The term “Phthalate Free” Covered Packaging shall mean that each component of each Covered Packaging 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 by test results using Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C.

**2.3** “Effective Date” shall mean December 1, 2017.

## **3. INJUNCTIVE-TYPE RELIEF**

### **3.1 Product Reformulation Commitment**

**3.1.1** Keeco represents as a material term of this Agreement that it has reached out to its vendors of Covered Packaging or bedding products incorporating Covered Packaging and

instructed them to manufacture Covered Packaging to comply with Proposition 65 phthalate standards. No later than the Effective Date, to the extent Keeco has not already specifically done so, Keeco shall provide the Phthalate Free phthalate concentration standards of Section 2.2 to its then-current vendors of any Covered Packaging, or then-current vendors of any bedding product incorporating Covered Packaging, 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 Packaging. Keeco 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, Keeco shall provide the Phthalate Free phthalate concentration standards of Section 2.2 to any New Vendors of any Covered Packaging 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 Packaging. “New Vendors” means vendors of Covered Packaging, or bedding incorporating Covered Packaging, from which Keeco was not obtaining Covered Packaging as of the Effective Date. As a condition to the purchase and acquisition of any Covered Packaging or bedding products incorporating Covered Packaging from any New Vendor, Keeco 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 Packaging. For two (2) years after the Effective Date, for every Covered Packaging Keeco manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from a New Vendor, Keeco 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 the Effective Date, Keeco 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 Packaging that is not Phthalate Free. For every Covered Packaging Keeco manufactures, causes to be manufactured, orders, causes to be ordered or otherwise sells after the Effective Date, Keeco 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. Keeco shall use reasonable efforts to conduct random tests on Covered Packaging to ensure compliance with the Phthalate Free requirement.

**3.2** Previously Distributed Covered Packaging.

**3.2.1** Customer Notification - No later than the Effective Date, Keeco shall send a letter, electronic or otherwise ("Notification Letter") to: (1) each retailer or distributor in California to which it, after January 1, 2016, supplied any Covered Packaging; (2) any other retailer or distributor in California that Keeco reasonably understands or believes has any inventory of Covered Packaging; and (3) any other retailer or customer that Keeco reasonably understands or believes has any inventory of Covered Packaging and maintains any retail outlet for the sale of Covered Packaging in California. The Notification Letter shall advise the recipient that Covered Packaging contains DEHP and/or DINP, chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. The Notification letter shall direct the recipient that with respect to Covered Packaging, the recipient must apply stickers or provide warnings with a clear and reasonable Proposition 65 warning before it is sold in the California market or to a California customer. The Notification Letter shall include a sheet of white background, adhesive Proposition 65 Warning stickers with one of the following warnings in no less than Book Antiqua, point 9 font (or its equivalent):

WARNING: This product contains 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.*

WARNING: The clear exterior storage bag in which this product is packaged contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

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

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

### **3.3 Existing Inventory Product Packaging Labels**

For any inventory of Covered Packaging obtained by Keeco prior to the Effective Date, Keeco shall not sell or ship any of such Covered Packaging that is not Phthalate Free to a California customer or retailer, or sell or ship any Covered Packaging that is not Phthalate Free to a customer or retailer that Keeco has reason to know maintains retail outlets in California, unless such Covered Packaging is shipped with product package labelling set forth hereafter.

Each such label utilized by Keeco for any Covered Packaging shall be prominently placed 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.

#### **3.3.1 Covered Packaging Packaging Label.**

For all non-Phthalate Free Covered Packaging sold into California to a California customer or to any entity that Keeco has reason to know either maintains retail outlets in California or is a distributor for any entity that maintains retail outlets in California, Keeco shall affix a label to the Covered Packaging that states either of the following warnings:

**WARNING:** This packaging contains 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.*

**WARNING:** The clear exterior storage bag in which this product is packaged contains chemicals known to the State of California to cause cancer and birth defects or other reproductive harm.

### **3.3.2 Internet Website Warning.**

A warning must be given in conjunction with the sale of any Covered Packaging by Keeco via the Internet, provided it appears either: (a) on the same web page on which a Covered Packaging is displayed; (b) on the same web page as the order form for a Covered Packaging; (c) on the same page as the price for any Covered Packaging; 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 Packaging for which it is given in the same type size or larger than the Covered Packaging description text:

**WARNING:** This packaging for this product contains 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.*

Alternatively, a designated symbol may appear adjacent to or immediately following the display, description, or price of the Covered Packaging 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 PVC packaging containing a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

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

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

As a condition of settlement of all the claims referred to in this Agreement, Keeco shall pay a total of \$8,500 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 Keeco 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 Keeco evidence that the Covered Packaging has been distributed by Keeco in sales volumes materially different (more than 15%) than those identified by Keeco prior to execution of this Agreement, then Keeco shall be liable for an additional penalty amount of \$10,000.00. Keeco 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 Keeco with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Keeco shall have thirty (30) days to agree to the amount of fees and penalties owing by Keeco and submit such payment to Davia in accordance with the method of payment of penalties and fees identified in Sections 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 and shall be entitled to all reasonable attorney fees and costs, in accordance with the requirements of Code of Civil Procedure section 1021.5, relating to such claim.



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

The Parties acknowledge that Davia and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of this Agreement had been settled. The Parties then attempted to (and did) reach 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, Keeco shall cause to be paid to Davia's counsel the amount of \$34,000 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**

Keeco 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, 2016-00930, 2016-00939"), in the amount of \$6,375 and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2016-00930, 2016-00939") in the amount of \$2,125. Davia shall deliver to the California Office of Environmental Health Hazard Assessment the civil penalty check payable to OEHHA.

Keeco 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 "2016-00930, 2016-00939") in the amount of \$34,000.

Keeco 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, 2016-00930, 2016-00939"), in the amounts agreed to pursuant to Section 4.2 or as ordered by the Court.

Keeco 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 "2016-00930, 2016-00939"), 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 of January 1, 2018, 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

Keeco 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 (2) 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, Keeco 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 Sections 4.3 and 4.2.

## **5. RELEASES**

### **5.1 DAVIA'S RELEASE OF KEECO**

**5.1.1** This settlement is a full, final and binding resolution between Davia and Keeco of any violation of Proposition 65 that was or could have been asserted by Davia on behalf of herself and her representatives or attorneys, against Keeco and its directors, officers, employees, and attorneys (jointly and severally "Releasees"), and each entity to whom Keeco directly or indirectly distributes or sells Covered Packaging, including but not limited to Retailers expressly including Bed Bath & Beyond Inc., downstream distributors and retailers ("Downstream Releasees"), based on their alleged failure to warn about alleged exposures to Listed Chemical contained in the Covered Packaging that were sold by Keeco into California before the Effective Date. As to Davia only, Keeco' 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 Packaging.

**5.1.2** Davia on behalf of herself, her past and current agents, representatives, attorneys, successors, and/or assignees also hereby provides a general release 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 Notices as to Covered Packaging sold by Keeco and Releasees and Downstream 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 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 she 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 Keeco, that manufactured the Covered Packaging or any component parts thereof, or any distributors or suppliers who sold the Covered Packaging or any component parts thereof to Keeco.

## **5.2 KEECO'S RELEASE OF DAVIA**

Keeco, 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 for any and all actions taken or statements made (or those that could have been taken or made) by Davia and her attorneys through the execution of this Agreement whether in the course of investigating claims in this matter, otherwise seeking to enforce Proposition 65 in this matter, or with respect to the Covered Packaging that were the subject of the Notices. Keeco 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.

Keeco 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, Keeco may ask Davia, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into either a stipulated settlement agreement or a proposed consent judgment, and to seek the court's order and approval of the stipulated settlement agreement or consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Davia shall reasonably cooperate with Keeco and use her best efforts, and that of her counsel, to support the entry of an order approving a stipulated settlement or a consent judgment by the Superior Court in and for the County of Marin. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Keeco will reimburse Davia and her counsel for counsel's reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into an order or proposed consent judgment and seeking judicial approval of the stipulated settlement agreement or consent judgment, in an amount not to exceed \$12,000.00, exclusive of fees and costs that may be incurred on appeal. Keeco will remit payment to the Sheffer Law Firm, at the address set forth in Section 9 below. Such additional fees and costs shall be paid by Keeco within ten days after its receipt of an itemized invoice from Davia for work performed under this Section. Keeco understands no motion to approve any stipulated settlement agreement or proposed consent judgment will be filed absent payment for the work performed under this Section. All payments owed to Davia, pursuant to this 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 Keeco 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 this 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 overnight delivery service) or electronic mail to the following:

For Keeco:

Kevin F. Lawrence, COO  
Keeco, LLC  
30736 Wiegman Road  
Hayward, California 94544

With a copy to its counsel:

Stephen P. Brunner  
Attorney At Law  
115 Sansome Street, Suite 1250  
San Francisco, California 94104  
[aba@sonic.net](mailto:aba@sonic.net)

For Davia to:

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

sheffesq@aol.com

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

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

Davia shall 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 and contemporaneous discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those stated expressly 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 Davia prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable attorney fees and costs incurred as a result of such motion, order or application, consistent with C.C.P. § 1021.5 upon a finding that Keeco's opposition to said motion, application for order to show cause or other proceeding lacked substantial justification. Should Keeco prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, Keeco shall be entitled to its reasonable attorney fees and costs incurred as a result of such motion, order or application, upon a finding that Davia's opposition to said motion, application for order to show

cause or other proceeding lacked substantial justification. For purposes of this Agreement, the term substantial justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil Procedure §§ 2016.010, *et seq.*

**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**

The Parties and their counsel 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 in 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 shall 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 Agreement.

#### **16. AUTHORIZATION**

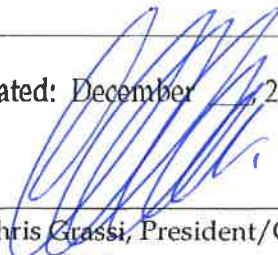
The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

**IT IS SO AGREED.**

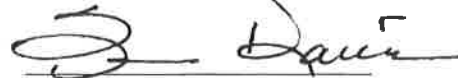


Dated: December 1, 2017

12/08/17

  
Chris Grassi, President/CEO  
Keeco, LLC

Dated: December 4, 2017

  
Susan Davia