

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Gregory M. Sheffer, State Bar No. 173124
SHEFFER LAW FIRM
81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941
Telephone: 415.388.0911
Facsimile: 415.388.9911

Attorneys for Plaintiff
SUSAN DAVIA

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

SUSAN DAVIA,
Plaintiff,
v.
LEVTEX LLC and DOES 1-150,
Defendants.

Case No. CIV1900432
CONSENT TO JUDGMENT SETTLEMENT AGREEMENT
Action Filed: January 31, 2109
Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and
4 between Susan Davia, (“Davia”) and Levtex LLC (“Levtex” or “Defendant”), with Davia and Levtex
5 individually referred to as a “Party” and collectively referred to as the “Parties.”

6 **1.2 Davia**

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

10 **1.3 Levtex**

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

15 **1.4 General Allegations**

16 Davia alleges that Levtex participated in the manufacture, distribution and/or sale, in the State
17 of California, of PVC product display and storage cases for bedding products made with materials
18 that exposed users to DEHP (di(2-ethylhexyl)phthalate) and DINP (di(isononyl)phthalate) without
19 first providing “clear and reasonable warning” under Proposition 65. Levtex disputes some or all
20 such allegations. DEHP is listed as a carcinogen and reproductive toxin pursuant to Proposition 65
21 and DINP is listed as a carcinogen. DEHP and DINP shall collectively be referred to hereinafter as
22 “Listed Chemical”.

23 **1.5 Notices of Violation**

24 On August 28, 2018, Davia served Levtex and various public enforcement agencies with a
25 document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed
26 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
27 consumers of the presence of DEHP and DINP, toxic chemicals allegedly found in the Covered
28

1 Products sold in California (AG Notice 2018-01561). The August 28, 2018, 60-Day Notice of Violation
2 shall be referred to herein as "Notice."

3 Levtex received the Notice. Levtex represents that, as of the date it executes this Agreement,
4 it is not aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action
5 related to DEHP or DINP in the Covered Products, as identified in the 60-Day Notice. Levtex
6 represents that, as of the date it executes this Agreement, it is aware of a private enforcer who has
7 presented Levtex with two Proposition 65 notices, AG Number 2018-02176 and AG Number 2018-
8 02343, that are related to DEHP in the Covered Products, as identified in the 60-Day Notice by Davia.

9 **1.6 Complaint**

10 On January 31, 2019, Davia filed a Complaint in the Superior Court of the State of California
11 for the County of Marin, Case No. CIV1900432, alleging violations by Levtex of Health and Safety
12 Code § 25249.6 based on the alleged exposures to DEHP and DINP in the Covered Product (defined
13 below)(the "Action").

14 **1.7 No Admission**

15 This Agreement resolves claims that are denied and disputed by Levtex. The Parties enter into
16 this Agreement pursuant to a full, final and binding settlement of any and all claims between the
17 Parties for the purpose of avoiding prolonged litigation. Levtex denies the material factual and legal
18 allegations contained in the Notices, maintains that it did not knowingly or intentionally expose
19 California consumers, in violation of Proposition 65, to any Listed Chemical through the reasonably
20 foreseeable use of the Covered Products (defined below) and otherwise contends that, all Covered
21 Products it has manufactured, distributed and/or sold in California have been and are in compliance
22 with all applicable laws. Nothing in this Agreement shall be construed as an admission by Levtex of
23 any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute
24 or be construed as an admission by Levtex of any fact, finding, conclusion, issue of law, or violation
25 of law, such being specifically denied by Levtex. However, notwithstanding the foregoing, this
26 section shall not diminish or otherwise affect Levtex' obligations, responsibilities, and duties under
27 this Agreement.

1 **1.8** Consent to Jurisdiction

2 For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction over
3 Levtex LLC as to the allegations contained in the Complaint, that venue is proper in county of Marin,
4 and that this Court has jurisdiction to enter and enforce the provisions of this Agreement. The Parties
5 stipulate that, pursuant to C.C.P. § 664.6, the Court in which this action is filed shall retain jurisdiction
6 over the Parties to enforce this Agreement until performance in full of the terms of the settlement.

7 **2.** DEFINITIONS

8 **2.1** The term "Product" or "Covered Product" shall mean all vinyl/PVC
9 packaging/storage cases for bedding products, and the bedding products within such
10 packaging/storage cases, that are manufactured, distributed or sold by Levtex to distributors or
11 retailers in California, including those cases and bedding for the Levtex Catalina Cotton Quilt.

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

17 **2.3** "California Customer" shall mean any customer with a ship to address in California
18 or any retailer that Defendant reasonably understands maintains retail store outlets in California or
19 any ecommerce seller that sells to any customers in California. Excluded from this definition shall be
20 any sales shipped directly from Levtex on behalf of a customer to consumers outside of California (i.e,
21 sales "drop shipped" from Levtex).

22 **2.4** "Effective Date" shall mean February 22, 2019.

23 **3.** INJUNCTIVE RELIEF

24 **3.1** Product Reformulation Commitment

25 **3.1.1** No later than the Effective Date, Levtex shall provide the Phthalate Free phthalate
26 concentration standards of Section 2.2 to its then-current vendors of any Covered Product, or vendor
27 of bedding products incorporating any Covered Product, and instruct such entities not to incorporate
28 any raw or component materials that do not meet the Phthalate Free concentration standards of

1 Section 2.2 into any Covered Product. Levtex shall maintain copies of all vendor correspondence
2 relating to the Phthalate Free concentration standards for two (2) years after the Effective Date and
3 shall produce such copies to Davia within fifteen (15) days of receipt of reasonable request made in
4 writing from Davia, as long as such request is made within two (2) years after the Effective Date.

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

23 **3.1.3** As of the Effective Date, Levtex shall not manufacture or cause to be manufactured, or
24 order or cause to be ordered any Covered Product that is not Phthalate Free, or bedding product
25 incorporating any Covered Product that is not Phthalate Free. For every Covered Product, or bedding
26 product incorporating any Covered Product, Levtex manufactures, causes to be manufactured, orders,
27 or causes to be ordered after the Effective Date, Levtex shall maintain copies of all testing of such
28 products demonstrating compliance with this section, shall maintain copies of all vendor

1 correspondence relating to the Phthalate Free concentration standards of Section 2.2 and shall produce
2 such copies to Davia within fifteen (15) days of receipt of reasonable request made in writing from
3 Davia, as long as such request is made within two (2) years after the Effective Date.

4 **3.2 Previously Distributed Covered Products**

5 **3.2.1 Customer Notification** - No later than the Effective Date, Levtex shall send a letter,
6 electronic or otherwise ("Notification Letter") to (1) each retailer or distributor in California to which
7 it, after January 1, 2018, supplied any Covered Product, or bedding product incorporating any
8 Covered Product, and (2) any other retailer or distributor in California that Levtex reasonably
9 understands or believes has any inventory of Covered Product, or bedding product incorporating any
10 Covered Product. The Notification Letter shall advise the recipient that Covered Products can expose
11 California consumers to chemicals, including DEHP and DINP, known to the State of California to
12 cause cancer and birth defects or other reproductive harm. The Notification Letter shall include a
13 sheet of white background, adhesive Proposition 65 Warning stickers with the following warning in
14 no less than Book Antiqua, point 9 font (or its equivalent):

15 **⚠WARNING:** The clear, exterior packaging can
16 expose you to chemicals, including di(2-
17 ethylhexyl)phthalate (DEHP), that are known to
18 the State of California to cause cancer and birth
19 defects or other reproductive harm. For more
20 information go to www.P65Warnings.ca.gov.
[This packaging is not intended as a storage
container. Please discard packaging after
purchase.]

21 or

22 **⚠WARNING:** The clear, exterior packaging can
23 expose you to di(2-ethylhexyl)phthalate (DEHP),
24 and/or Di-iso-nonyl phthalate (DINP), chemicals
25 known to the State of California to cause cancer
26 and birth defects or other reproductive harm. For
27 more information go to
28 www.P65Warnings.ca.gov. [This packaging is
not intended as a storage container. Please
discard packaging after purchase.]

27 The bracketed language is optional. The Notification Letter shall be sent with return receipt
28 requested.

1 **3.2.2** Defendant shall maintain records of compliance correspondence, inventory reports or
2 other communication confirming compliance with § 3.2.1 for three (3) years from the issuance of the
3 initial Notification Letter and shall produce copies of such records upon written request by Davia.

4 **3.3** Existing Inventory Sales Limitation

5 For every Covered Product, or bedding product incorporating any Covered Product, Levtex
6 ordered prior to the Effective Date ("Inventory"), and that is not confirmed to be Phthalate Free,
7 Levtex shall not sell or ship, to any California Customer, any of such Covered Product, or bedding
8 product incorporating any Covered Product, unless the Covered Product is labeled with one of the
9 following warning statements on a white background label in no less than Book Antiqua, point 9 font
10 (or its equivalent):

11
12 ⚠️**WARNING:** The clear, exterior packaging can
13 expose you to chemicals, including di(2-
14 ethylhexyl)phthalate (DEHP), that are known to
15 the State of California to cause cancer and birth
16 defects or other reproductive harm. For more
information go to www.P65Warnings.ca.gov
[This packaging is not intended as a storage
container. Please discard packaging after
purchase.]

17 or

18 ⚠️**WARNING:** The clear, exterior packaging can
19 expose you to di(2-ethylhexyl)phthalate (DEHP),
20 and/or Di-iso-nonyl phthalate (DINP), chemicals
known to the State of California to cause cancer
21 and birth defects or other reproductive harm. For
more information go to
22 www.P65Warnings.ca.gov [This packaging is not
intended as a storage container. Please discard
23 packaging after purchase.]

24 The bracketed language is optional.

25 After November 15, 2019, Levtex shall not distribute or cause to be distributed or otherwise
26 sell, to any California Customer, any Covered Product, or bedding product incorporating any
27 Covered Product, that is not confirmed to be Phthalate Free regardless of whether a Proposition 65
28 warning label has been placed on the Covered Product.

1 **4. MONETARY PAYMENTS**

2 **4.1 Civil Penalty**

3 As a condition of settlement of all the claims referred to in this Settlement Agreement,
4 Levtex shall cause to be paid a total of \$6,500 in civil penalties in accordance with California Health
5 & Safety Code § 25249.12(c)(1) & (d).

6 **4.2 Augmentation of Penalty Payments**

7 For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon
8 Levtex and its counsel for accurate, good faith reporting to Davia of the nature and amounts of
9 relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents
10 to Levtex evidence that the Covered Products have been distributed by Levtex in sales volumes
11 materially (more than 25%) different than those identified by Levtex prior to execution of this
12 Agreement, then Levtex shall be liable for an additional penalty amount of \$10,000.00. Levtex shall
13 also be liable, in accordance with the requirements of Code of Civil Procedure section 1021.5 for any
14 reasonable, additional attorney fees expended by Davia in discovering such additional retailers or
15 sales. Davia agrees to provide Levtex with a written demand for all such additional penalties and
16 attorney fees under this Section, including Davia's evidence supporting any claim for a materially
17 different sales volume. After service of such demand, Levtex shall have thirty (30) days to agree to
18 or dispute the amount of fees and penalties owing by Levtex and to either submit such payment to
19 Davia in accordance with the method of payment of penalties and fees identified in Section 4.1 and
20 4.4 or to submit evidence disputing Davia's claim. Should this thirty (30) day period pass without
21 any resolution between the parties and, if appropriate, payment of such additional penalties and fees,
22 Davia shall be entitled to file a formal legal claim for civil penalties pursuant to this section. The
23 prevailing party on any claim filed pursuant to this section shall be entitled to its reasonable fees and
24 costs.

25 **4.3 Reimbursement of Davia's Fees and Costs**

26 Davia has confirmed to Levtex her willingness to execute a settlement on all terms except for
27 reimbursement of plaintiff's fees and costs, leaving such issue for formal resolution independent of
28 this Agreement. However, the Parties have reached an accord on the compensation due to Davia

1 and her counsel under general contract principles and the private attorney general doctrine codified
2 at California Code of Civil Procedure section 1021.5, for all work performed in this matter, except
3 fees that may be incurred on appeal. Under these legal principles, Levtex shall cause to be paid to
4 Davia's counsel the amount of \$32,500 for fees and costs incurred investigating, litigating and
5 enforcing this matter. Such payment shall be made payable to "Sheffer Law Firm".

6 4.4 Payment Procedures

7 Levtex shall satisfy its obligation to pay civil penalties pursuant to Section 4.1 by delivery of
8 a civil penalty check payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2018-
9 01561"), in the amount of \$4,875 and a civil penalty check payable to "Susan Davia" (Tax ID to be
10 supplied, Memo line "Prop 65 Penalties, 2018-01561") in the amount of \$1,625. Davia shall be
11 responsible for delivering to the California Office of Environmental Health Hazard Assessment the
12 civil penalty check payable to OEHHA.

13 Levtex shall satisfy its obligation to pay attorney fees and costs pursuant to Section 4.3 by
14 delivery of a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2018-01561") in the
15 amount of \$32,500.

16 Levtex shall satisfy its obligation to pay any civil penalties pursuant to Section 4.2 by civil
17 penalty checks payable to "OEHHA" and "Susan Davia" (Memo line "Prop 65 Penalties, 2018-
18 01561"), in the amounts agreed to pursuant to Section 4.2 or as ordered by the Court.

19 Levtex shall satisfy its obligation to pay any attorney fees or costs pursuant to Section 4.2 by
20 a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2018-01561"), in the amounts
21 agreed to pursuant to Section 4.2 or as ordered by the Court.

22 All Section 4.1 and Section 4.3 civil penalty and attorney fee/cost payments shall be delivered
23 to plaintiff's counsel within ten (10) business days after execution of this Agreement, at the following
24 address:

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

All Section 4.2 civil penalty and attorney fee/cost payments shall be delivered to plaintiff's

1 counsel at the following address on or before the date agreed upon pursuant to that section or ordered
2 by the Court:

3 Sheffer Law Firm
4 Attn: Proposition 65 Controller
5 81 Throckmorton Ave., Suite 202
6 Mill Valley, CA 94941

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

10 **4.5 Issuance of 1099 Forms**

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

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

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

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

20 **5. RELEASES**

21 **5.1 Davia's Release of Levtex**

22 **5.1.1** This settlement agreement is a full, final and binding resolution between Davia,
23 and Levtex of any violation of Proposition 65 that was or could have been asserted by Davia on behalf
24 of herself, her representatives or attorneys, against Levtex, its directors, officers, employees,
25 attorneys ("Releasees"), and each entity to whom Levtex directly or indirectly distributes or sells
26 Covered Products, including, but not limited, to Retailers, downstream distributors and retailers
27 ("Downstream Releasees"), based on their alleged failure to warn about alleged exposures to any
28 Listed Chemical contained in the Covered Products that were distributed or sold by Levtex before
the Effective Date of this Agreement. Davia acting on her own behalf and in the public interest

1 releases Levtex from all claims for violations of Proposition 65 up through the Effective Date based
2 on exposure to Listed Chemicals from Covered Products as set forth in the Notice. Compliance with
3 the terms of this Settlement Agreement constitutes compliance with Proposition 65 with respect to
4 exposures to Covered Products as set forth in the Notice. As to Davia only, Levtex's compliance with
5 the terms of this settlement shall be deemed compliance with Proposition 65 as to exposures to DINP,
6 DIDP, DEHP, DBP, BBP and DnHP in the Covered Products.

7 **5.1.2** Davia also provides a general release herein which shall be effective as a full and final
8 accord and satisfaction, as a bar to all claims, actions and causes of action, of any nature, character or
9 kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notice
10 as to Covered Products sold by Levtex or Releasees into California prior to the Effective Date. Davia
11 acknowledges that she is familiar with section 1542 of the California civil code, which provides as
12 follows:

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

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

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

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

1 **5.2 Levtex's Release of Davia**

2 Levtex, on behalf of itself, its past and current agents, representatives, attorneys, successors,
3 and/or assignees, hereby waives any and all claims against Davia and her attorneys and other
4 representatives, for any and all actions taken or statements made (or those that could have been taken
5 or made) by Davia and her attorneys and other representatives through the execution of this
6 Agreement whether in the course of investigating claims in this matter, otherwise seeking to enforce
7 Proposition 65 against it in this matter, or with respect to the Covered Products that were the subject
8 of the Notices. Levtex acknowledges that it is familiar with Section 1542 of the California Civil Code,
9 which provides as follows:

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

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

21 **6. SEVERABILITY**

22 If any of the provisions of this Agreement are found by a court to be unenforceable, the validity
23 of the enforceable provisions remaining, after express agreement of the Parties, shall not be adversely
24 affected, unless the Court finds that any unenforceable provision is not severable from the remainder
25 of the Agreement.

26 **7. COURT APPROVAL**

27 This Agreement is effective upon execution but must also be approved by the Court. If this
28 Agreement is not approved by the Court in its entirety, the Parties shall meet and confer to determine

1 whether to modify the terms of the Agreement and to resubmit it for approval. In meeting and
2 conferring, the Parties agree to undertake any actions reasonably necessary to amend and/or modify
3 this Agreement in order to further the mutual intention of the Parties in entering into this Agreement.

4 The Agreement shall become null and void if, for any reason, it is not approved and entered
5 by the Court, as it is executed, within one year after it has been fully executed by all Parties.

6 **8. GOVERNING LAW**

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

8 **9. NOTICES**

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

11 For Levtex LLC:

12 Michael Levin, CEO
13 Levtex LLC
14 1830 14th Street
Santa Monica, CA 90404

15 With a copy to their counsel:

16 Belynda Reck, Esq.
17 K&L Gates
18 10100 Santa Monica, Blvd., Eighth Floor
Los Angeles, CA 90067
19 Belynda.Reck@klgates.com

20 For Davia to:

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

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

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

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

28

1 **11. MODIFICATION**

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

3 **12. ADDITIONAL POST-EXECUTION ACTIVITIES**

4 The Parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
5 is required to obtain judicial approval of this Agreement. In furtherance of obtaining such approval,
6 the Parties and their respective counsel agree to mutually employ their best efforts to support the
7 entry of this Agreement as a settlement agreement and obtain approval of the Agreement - sufficient
8 to render an order approving this agreement - by the Court in a timely manner. Any effort to impede
9 judicial approval of this Agreement shall subject such impeding party to liability for attorney fees
10 and costs incurred by the party seeking approval of this Agreement.

11 **13. ENTIRE AGREEMENT**

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

21 **14. ATTORNEY'S FEES**

22 **14.1** Should either of the Parties prevail on any motion, application for order to show
23 cause or other proceeding to enforce a violation of this Agreement, so long as that party engaged in
24 a good faith meet and confer attempt regarding the dispute, such Party shall be entitled to its
25 reasonable attorney fees and costs incurred as a result of such motion, order or application, consistent
26 with C.C.P. § 1021.5.

27 **14.2** Except as otherwise specifically provided herein, each Party shall bear its own costs
28 and attorney's fees in connection with the Notices.

1 Nothing in this section shall preclude a Party from seeking an award of sanctions pursuant to
2 law.

3 **15. NEUTRAL CONSTRUCTION**

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

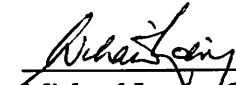
12 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

16 **17. AUTHORIZATION**

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

19 **IT IS SO AGREED**

<p>20 Dated: February <u>20</u>, 2019</p> <p>21</p> <p>22  _____</p> <p>23 Michael Levin, CEO Levtex LLC</p> <p>24</p>	<p>Dated: February __, 2019</p> <p>_____</p> <p>Susan Davia</p>
---	---

1 Nothing in this section shall preclude a Party from seeking an award of sanctions pursuant to
2 law.

3 **15. NEUTRAL CONSTRUCTION**

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

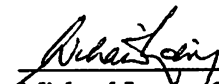
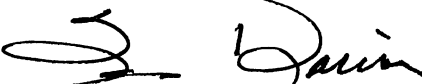
12 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

16 **17. AUTHORIZATION**

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

19 **IT IS SO AGREED**

<p>20 Dated: February <u>20</u>, 2019</p> <p>21</p> <p>22  Michael Levin, CEO Levtex LLC</p>	<p>20 Dated: February <u>25</u>, 2019</p> <p>21</p> <p>22  Susan Davia</p>
---	--

25
26
27
28