

PROPOSITION 65 SETTLEMENT AGREEMENT
(Susan Davia AG Notices 2020-01683, 2021-00181, 2021-00683)

1. INTRODUCTION

1.1 The Parties

This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and between noticing party Susan Davia (“Davia”) and noticed parties The Beadsmith, Inc., Beadsmith.com and Helby Imports Company (hereafter, collectively, “Beadsmith”), with Davia and Beadsmith each referred to as a “Party” and 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 Beadsmith

1.4 For the sole purpose of this agreement and the resolution of the subject claims, and without admitting any liability, each of The Beadsmith, Inc., Beadsmith.com and Helby Imports Company does not dispute that it 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”).

1.5 General Allegations

Davia alleges that Beadsmith is partially responsible, along with others, for the design and manufacture, and is responsible for the distribution and/or sale, in the State of California, of Beadsmith brand craft pliers, hand tools and tool kit cases made with vinyl components that exposed users to di(2-ethylhexyl)phthalate (“DEHP”) without first providing “clear and reasonable warning” under Proposition 65. Pursuant to Proposition 65, DEHP is listed as a carcinogen and reproductive toxin. Davia has also and separately alleged that Beadsmith is responsible for the design, manufacture,

distribution and/or sale, in the State of California, of Beadsmith branded brass gauge products made with brass materials that exposed users to Lead without first providing “clear and reasonable warning” under Proposition 65. Pursuant to Proposition 65, Lead is listed as a carcinogen and reproductive toxin. DEHP and Lead shall be collectively referred to hereinafter as the “Listed Chemical.”

1.6 Notices of Violation

On July 10, 2020, Davia served Beadsmith 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, a toxic chemical found in the Beadsmith plier and tool Covered Products (hereafter defined) sold in California (AG Notice 2020-01683).

On January 29, 2021, Davia served Beadsmith and various public enforcement agencies with a document entitled “Supplemental 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 Lead, a toxic chemical found in the brass craft gauge Covered Products (hereafter defined) sold in California (AG Notice 2021-00181).

On March 10, 2021, Davia served Beadsmith and various public enforcement agencies with a document entitled “Supplemental 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, a toxic chemical found in the Beadsmith craft tool kit Covered Products (hereafter defined) sold in California (AG Notice 2021-00683).

These July 10, 2020, January 29, 2021, and March 10, 2021 Notices of Violation from Davia to Beadsmith shall hereafter be collectively referred to as “Notices.” Beadsmith 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 Lead in the Covered Products, as identified in the Notices.

1.7 No Admission

This Agreement resolves claims that are denied and disputed by Beadsmith. The Parties enter into this Agreement pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Beadsmith 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 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 and regulations, including Proposition 65. Nothing in this Agreement shall be construed as an admission by Beadsmith 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 Beadsmith of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Beadsmith. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Beadsmith' obligations, responsibilities, and duties under this Agreement.

1.8 Consent to Jurisdiction

For purposes of this Agreement only, the Parties stipulate that the Marin County Superior Court has jurisdiction over Beadsmith as to this Agreement, that venue for any action to enforce this Agreement is proper in County of Marin, that this Agreement shall be construed as made pursuant to Code of Civil Procedure Section 664.6 and the Marin County Superior Court shall be considered to have jurisdiction to enforce the provisions of this Agreement until performance in full of the terms of the settlement.

2. DEFINITIONS

2.1 "Phthalate Covered Product" shall mean all Beadsmith brand craft pliers, hand tools and tool kit case products made with vinyl components, including, but not limited to, Beadsmith Vintaj Loop Making Plier (V-PL11), Beadsmith Micro Chain Flat Nose Plier (#PL512), Beadsmith Zebra Round

Nose Plier (PLZ41), Beadsmith Foam Wide Flat Nose Plier and Beadsmith Zebra Tool Kit, #PLZSET (7 90524 01865 9).

2.2 “Phthalate Free” Phthalate Covered Products shall mean any accessible component of any Covered Product contains less than or equal to 1,000 parts per million (“ppm”) of DEHP, DINP, DBP, di-isodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”) and butyl benzyl phthalate (“BBP”) as determined by a minimum of duplicate quality controlled test results using Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or equivalent methodologies utilized by federal or state agencies to determine the presence and measure the quantity of phthalates in solid substances.

2.3 “Lead Covered Product” shall mean all sizes and types of Beadsmith labelled brass gauge products including, but not limited to, Liberty Brass Sliding Gauge (790524279524).

2.4 “Lead Free” Lead Covered Products shall mean any brass component of any Lead Covered Product that contains less than 100 parts per million (“ppm”) Lead when analyzed pursuant to EPA testing methodologies 3050B and 6010B, or equivalent methodologies utilized by Federal or State agencies for the purpose of determining Lead content in a solid substance

2.5 “Covered Product”, when used without a “Lead” or “Phthalate” descriptor shall mean both Lead Covered Product and Phthalate Covered Product, collectively.

2.6 “Effective Date” shall mean November 1, 2020.

3. INJUNCTIVE-TYPE RELIEF

3.1 Products No Longer in Beadsmith’s Control

No later than the Effective Date, Beadsmith shall send a letter, electronic or otherwise (“Notification Letter”) to the national or California purchasing manager for any retail entity to which Beadsmith has sold Covered Products since January 1, 2018, and that Beadsmith reasonably understands either maintains an ecommerce retail website or maintains retail outlets in California. The Notification Letter shall advise the recipient that Covered Products “have been tested for the

presence of phthalates and found to contain DEHP, a chemical known to the State of California to cause cancer and birth defects or other reproductive harm,” and request that the recipient either pull all Covered Products from store displays and return its entire inventory of Covered Products to Beadsmith or label the Covered Products remaining in inventory for sale in California with a label that complies with Section 3.3. The Notification Letter shall request a response from the recipient within 15 days, confirming that the letter was received. Beadsmith shall maintain records of all correspondence or other communications generated pursuant to this Section for two years after the Effective Date and shall promptly produce copies of such records upon Davia’s written request.

3.2 Product Reformulation Commitment

3.2.1 No later than the Effective Date, Beadsmith shall provide the Phthalate Free concentration standards of Section 2.2 to its then-current vendors or manufacturers of any Phthalate Covered Product and to its vendors of any vinyl material for any Phthalate 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 Phthalate Covered Product or to supply any Phthalate Covered Product to Beadsmith that is not Phthalate Free. Beadsmith 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 written request from Davia.

3.2.2 No later than the Effective Date, Beadsmith shall provide the Lead Free concentration standards of Section 2.4 to its then-current vendors or manufacturers of any Lead Covered Product and to its vendors of any brass material for any Lead Covered Product, and instruct such entities not to incorporate any raw or component materials that do not meet the Lead Free concentration standards of Section 2.4 into any Lead Covered Product or to supply any Lead Covered Product to Beadsmith that is not Lead Free. Beadsmith shall maintain copies of all vendor correspondence relating to the Lead concentration standards and shall produce such copies to Davia within fifteen (15) days of receipt of written request from Davia.

3.2.3 After the Effective Date, Beadsmith shall provide the Phthalate Free concentration standards of Section 2.2 to any new vendors or manufacturers of any Phthalate Covered Product, to its vendors of any vinyl material for any Phthalate 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 Phthalate Covered Product. Prior to purchase and acquisition of any Phthalate Covered Product or any vinyl component for any Phthalate Covered Product from any new vendor, Beadsmith shall obtain a written confirmation and accompanying laboratory test result from the new vendor demonstrating compliance with the Phthalate Free concentration standard in all materials comprising the Phthalate Covered Product. For every Phthalate Covered Product Beadsmith manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from a new vendor after the Effective Date, Beadsmith 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 for two (2) years from the Effective Date and shall produce such copies to Davia within fifteen (15) business days of receipt of written request from Davia. For every Phthalate Covered Product Beadsmith contends meets the Phthalate Free concentration standards and intends to offer for sale without a warning pursuant to Section 3.3 below, Beadsmith shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards for two (2) years from the Effective Date and shall produce such copies to Davia within fifteen (15) business days of receipt of written request from Davia.

3.2.4 After the Effective Date, Beadsmith shall provide the Lead Free concentration standards of Section 2.2 to any new vendors or manufacturers of any Lead Covered Product, to its vendors of any brass material for any Lead Covered Product and instruct such entities not to incorporate any raw or component materials that do not meet the Lead Free concentration standards of Section 2.2 into any Lead Covered Product. Prior to purchase and acquisition of any Lead Covered Product or any brass component for any Lead Covered Product from any new vendor, Beadsmith shall obtain a written

confirmation and accompanying laboratory test result from the new vendor demonstrating compliance with the Lead Free concentration standard in all materials comprising the Lead Covered Product. For every Lead Covered Product Beadsmith manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from a new vendor after the Effective Date, Beadsmith shall maintain copies of all testing of such products demonstrating compliance with this section, shall maintain copies of all vendor correspondence relating to the Lead Free concentration standards for two (2) years from the Effective Date and shall produce such copies to Davia within fifteen (15) business days of receipt of written request from Davia. For every Lead Covered Product Beadsmith contends meets the Phthalate Free concentration standards and intends to offer for sale without a warning pursuant to Section 3.3 below, Beadsmith shall maintain copies of all vendor correspondence relating to the Lead Free concentration standards for two (2) years from the Effective Date and shall produce such copies to Davia within fifteen (15) business days of receipt of written request from Davia..

3.2.5 As of December 31, 2020, Beadsmith shall not manufacture, cause to be manufactured, purchase or otherwise obtain any Phthalate Covered Product unless such Phthalate Covered Product meets the Phthalate Free concentration standards of this Agreement.

3.2.6 As of December 31, 2020, Beadsmith shall not manufacture, cause to be manufactured, purchase or otherwise obtain any Lead Covered Product unless such Lead Covered Product meets the Lead Free concentration standards of this Agreement.


3.3 Interim Covered Product Warnings

3.3.1 For any inventory of Phthalate Covered Products obtained by Beadsmith prior to December 31, 2020, that is not confirmed to be Phthalate Free, Beadsmith shall not distribute, sell or ship, or cause to be distributed, sold or shipped, any such Phthalate Covered Product unless such Phthalate Covered Product is shipped with product package label as set forth hereafter.

Each such warning utilized by Beadsmith for any Phthalate Covered Product shall be prominently placed either on the product, its labeling or its packaging 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.

Each warning shall either be printed directly on the Phthalate Covered Product consumer cardboard packaging or shall be affixed to the consumer cardboard packaging. Each warning shall include the yellow triangle with an internal exclamation point and state:

 **WARNING** The vinyl materials of this product can expose you to chemicals, including DEHP, that are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.


or

 **WARNING** Cancer and Reproductive Harm. - www.P65Warnings.ca.gov

3.3.2 For any inventory of Lead Covered Products obtained by Beadsmith prior to December 31, 2020, that is not confirmed to be Lead Free, Beadsmith shall not distribute, sell or ship, or cause to be distributed, sold or shipped, any such Lead Covered Product unless such Lead Covered Product is shipped with product package label as set forth hereafter.

Each such warning utilized by Beadsmith for any Lead Covered Product shall be prominently placed either on the product, its labeling or its packaging 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.

Each warning shall either be printed directly on the Lead Covered Product consumer cardboard packaging or shall be affixed to the consumer cardboard packaging. Each warning shall include the yellow triangle with an internal exclamation point and state:

 **WARNING** The brass materials of this product can expose you to


chemicals, including Lead, that are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

or


 **WARNING** Cancer and Reproductive Harm. -
www.P65Warnings.ca.gov

3.4 Internet Ecommerce Covered Product Warnings

A warning must be given in conjunction with the sale, or offer of sale, by Beadsmith of any Covered Product not confirmed by Beadsmith to be Lead Free and Phthalate Free via any ecommerce website owned, operated, managed or controlled by, or for the benefit of, Beadsmith. A warning will satisfy this requirement if it appears either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the checkout process. One of the following warning statements shall be used and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Covered Product for which it is given, or through a hyperlink using the word “WARNING”, in the same type size or larger than the Covered Product description text:

 **WARNING:** This product can expose you to chemicals known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

Alternatively, the following “short form” warning may be used on the ecommerce website, but only if the same warning language also appears on the product label or consumer packaging of the Covered Product itself.

 **WARNING:** Cancer and Reproductive Harm -

4. MONETARY PAYMENTS

4.1 Civil Penalty

As a condition of settlement of all the claims referred to in this agreement, Beadsmith shall pay a total of \$4,400 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Davia.

4.2 Augmentation of Penalty Payments

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon Beadsmith 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 evidence to counsel for Beadsmith that the Covered Products have been distributed in California in sales volumes materially different (more than 25%) than those identified by Beadsmith prior to execution of this Agreement, and Beadsmith does not provide Davia with competent and credible evidence to dispute this claim, then Beadsmith shall be liable for an additional penalty amount of \$10,000.00. Davia agrees to provide counsel for Beadsmith with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Beadsmith shall have thirty (30) days to either present evidence to counter this claim or to agree to the amount of fees and penalties owing by Beadsmith 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 the additional civil penalties pursuant to this Section and the prevailing party to such action shall be entitled to all reasonable attorney fees and costs 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 the agreement had been settled. Beadsmith expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized. 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, Beadsmith shall pay Davia's counsel the amount of \$40,600 for fees and costs incurred investigating, litigating and enforcing this matter.

4.4 Payment Procedures

Within seven (7) business days after execution of this Agreement, Beadsmith shall satisfy their 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, 2020-01683, 2021-00181, 2021-00683"), in the amount of \$3,300 and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2020-01683, 2021-00181, 2021-00683") in the amount of \$1,100.

Within seven (7) business days after execution of this Agreement, Beadsmith shall partially satisfy their 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 "2020-01683, 2021-00181, 2021-00683") in the amount of \$20,300.

Within thirty (30) calendar days of the payment of civil penalties and partial attorney fees, Beadsmith shall satisfy their remaining obligation to pay attorney fees and costs pursuant to Section 4.3 by delivery of another check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2020-01683, 2021-00181, 2021-00683") in the amount of \$20,300.

All civil penalty and attorney fee/cost payments shall be delivered to plaintiff's counsel at the

following address:

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

Beadsmith 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 five business days of the due date for such payment.

While the obligations of this agreement are binding upon execution, the Release of Beadsmith shall not become effective until after all monetary payments have been made by Beadsmith and all funds have cleared.

Beadsmith shall also pay any augmented civil penalties pursuant to Section 4.2, on or before the date agreed upon by the Parties or ordered by the Court pursuant to Section 4.2, with civil penalty checks payable to "OEHHA" (Memo line "Prop 65 Penalties, 2020-01683, 2021-00181, 2021-00683") and "Susan Davia" (Memo line "Prop 65 Penalties, 2020-01683, 2021-00181, 2021-00683") in the amount agreed to by the Parties or ordered by the Court pursuant to Section 4.2 and as divided pursuant to California Health & Safety Code § 25249.12(c)(1) & (d).

Beadsmith shall also pay attorney fees and costs pursuant to Section 4.2, on or before the date agreed upon by the Parties or ordered by the Court pursuant to Section 4.2, with a check payable to "Sheffer Law Firm" (Memo line "2020-01683, 2021-00181, 2021-00683") in the amount agreed upon by the Parties or ordered by the Court pursuant to Section 4.2.

All Section 4.2 payments shall be delivered to plaintiff's counsel at the following address:

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

Beadsmith shall also be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing from it under Section 4.2 that are not received by Sheffer Law Firm within ten

(10) 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, Beadsmith shall issue three separate 1099 forms, as follows:

- (a) 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) 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) issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section 4.2 and 4.3.

5. RELEASES

5.1 DAVIA'S RELEASE OF BEADSMITH

5.1.1 This settlement agreement is a full, final and binding resolution between Davia, and Beadsmith of any violation of Proposition 65 that was or could have been asserted by Davia, individually and on behalf of herself and her past and current representatives, agents, attorneys, successors and/or assigns ("Releasers") against Beadsmith, and each of their directors, officers, employees, attorneys, agents, parents, and subsidiaries ("Releasees"), based on their failure to warn about alleged exposures to DEHP and Lead contained in the Covered Products that were manufactured, distributed, sold or offered for sale by Beadsmith before the Effective Date. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 by Beadsmith with regard to the alleged or actual failure to warn about exposure to Lead or DEHP from Covered Products manufactured, sold or distributed for sale after the Effective Date.

5.1.2 In further consideration of the promises and agreements herein contained, and for so long as Beadsmith remains in compliance with the terms of this Agreement, Davia on behalf of

herself, her past and current representatives, agents, attorneys, successors and/or assigns hereby waives all Davia's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that Davia may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses -- including, but not limited to, investigation fees, expert fees, and attorneys' fees,-- limited to and arising under Proposition 65 with respect to the Lead and DEHP in the Covered Products manufactured, distributed, sold and/or offered for sale by Beadsmith before the Effective Date (collectively "claims"), against Beadsmith and Releasees.

5.1.3 Davia also, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of Davia, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Notices as to Covered Products manufactured, distributed or sold by Beadsmith or Releasees before 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.

Davia, in her individual capacity and on behalf of her past and current representatives, agents, attorneys, successors and/or assigns 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, excepting Section 4.2, 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.

5.1.4 This section 5.1 release shall not extend upstream to any entities, other than Beadsmith, 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 Beadsmith.

5.2 Beadsmith's Release of Davia

The Release by Davia is mutual. Beadsmith, each 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, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products. Beadsmith 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 THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASING PARTY.

Beadsmith 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 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.

6. ENFORCEMENT

Prior to bringing any motion, order to show cause, or other proceeding to enforce Proposition 65 or any terms of this Agreement relating to the alleged sale in California of any Covered Product without a warning and which is alleged to not be Phthalate Free, in actual or alleged violation of this Agreement, Davia shall provide a Notice of Violation (“NOV”) to Beadsmith. The NOV shall include, for each Covered Product alleged to be violation of this Agreement: the date of alleged violation(s), place of sale, date and proof of purchase (if relevant), and any test data obtained by Davia regarding each such Covered Product. Davia shall take no further action regarding any alleged violation nor seek any monetary recovery for herself, her agents or her counsel if, within 30 days of receiving such NOV, Beadsmith demonstrates (1) that such Covered Product was manufactured distributed, sold or offered for sale by Beadsmith before January 1, 2019; or (2) that Beadsmith directed the retailer or distributor of the Covered Product to take corrective action by placing an appropriate warning on the Covered Product(s) compliant with Section 3.3 of this Agreement following service of the NOV; (3) that the Covered Product is, in fact, Lead Free or Phthalate Free, or (4) the Covered Product qualifies as an Exceptional Covered Product upon which Beadsmith immediately placed a warning label in compliance with Section 3.3 on all affected inventory of such Covered Product upon receipt of the NOV. The term “Exceptional Covered Product” means any Covered Product that Beadsmith determines, either through its own investigation or discovery, or through the investigation of a citizen enforcer of Proposition 65 who shares the results of the investigation with Beadsmith, after it has already taken ownership of such Covered Product, does not meet the Phthalate Free or Lead Free standards of Section 2.2 and Section 2.4 despite Beadsmith’s good faith compliance with the formulation commitments of Section 3.3 and that Beadsmith determines is commercially impractical to return to the vendor. For purposes of Exceptional Covered Products, “commercially impractical” means the Covered Product cannot be replaced with Phthalate Free Covered Product in a timely manner to meet seasonal needs or such other circumstance as will result in commercial or competitive harm to Kohl’s despite their good faith efforts to meet the Phthalate Free Standard.

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 certified mail or electronic mail to the following:

For Beadsmith:

Ronnie Goldsmith, President
Beadsmith.com
The Beadsmith, Inc.
Helby Imports Company
37 Hayward Avenue
Carteret, NJ 07008

With a copy to its counsel:

Donald S. Burris
Attorney at Law
Burris & Schoenberg, LLP
12121 Wilshire Boulevard, Suite 504
Los Angeles, California 90025
don@bswlaw.net

For Davia to:

Proposition 65 Coordinator
Sheffer Law Firm
232 E. Blithedale Ave., Suite 210
Mill Valley, CA 94941

Any Party may modify the person and address to whom the notice is to be sent by sending each

other Party notice by certified mail and/or other verifiable form of written communication.

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

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

11. MODIFICATION

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

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 Party prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, that 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 and 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.

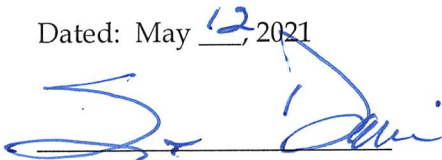
15. COUNTERPARTS, FACSIMILE SIGNATURES

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 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: May __, 2021</p> <p>_____ Ronnie Weinblut, President Beadsmith.com The Beadsmith, Inc. Helby Imports Company</p>	<p>Dated: May ¹²__, 2021</p> <p> _____ Susan Davia</p>
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