

**PROPOSITION 65 SETTLEMENT AGREEMENT  
(Susan Davia AG Notices 2015-01063, 2015-01137)**

**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 notice recipient Alliance Mercantile, Inc., a Washington State entity (“Alliance”) with Davia and Alliance 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 Alliance Mercantile, Inc.**

Alliance generally denies 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”). However, for the limited and exclusive purpose of this Settlement Agreement, for the limited and exclusive purpose of resolving Davia’s claims against Alliance and their vendors and customers, and to avoid expenditure of resources litigating this issue, Alliance is not asserting this denial.

**1.4 General Allegations**

Davia alleges that Alliance participated in the manufacture, distribution and/or sale, in the State of California, of PVC rainwear and rainwear packaging cases made with materials that exposed users to DEHP without first providing “clear and reasonable warning” under Proposition 65. DEHP is listed as a reproductive and developmental toxicant pursuant to Proposition 65 and is referred to hereinafter as the “Listed Chemical” or “DEHP”

**1.5 Notices of Violation**

On October 1, 2015, and October 29, 2015, Davia served Alliance 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 Covered Products sold in California (AG Notices 2015-01063 and 2015-01137).

Alliance received each of the October 20, 2015, and October 29, 2015, Notices of Violation.

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

#### **1.6 No Admission**

This Agreement resolves claims that are denied and disputed by Alliance. 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. Alliance denies the material factual and legal allegations contained in the Notices, maintains that it did not knowingly or intentionally expose California consumers to DEHP through the reasonably foreseeable use of the Covered Products, and otherwise contends that all Covered Products it has manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission by Alliance 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 Alliance of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Alliance. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Alliance’s 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 Alliance as to this Agreement, that venue is proper in 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, pursuant to Code of Civil Procedure Section 664.6 the Marin County Superior Court has jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

## **2. DEFINITIONS**

**2.1** The term “Covered Product 1” shall mean all Viking Brand rainwear products with accessible PVC surfaces or components, including the Handyman series, Journeyman series, and Open Road series of rainwear hoods, jackets, long coats, bib pants, pants and suits sold or distributed for sale in California.

**2.2** The term “Covered Product 2” shall mean all clear vinyl / PVC cases in which any Covered Product 1 is packaged for sale to the end consumer.

**2.3** The term “Covered Products”, when used without a following numeral, shall mean both Covered Product 1 and Covered Product 2, collectively.

**2.4** The term “Phthalate Free” Covered Products shall mean that any accessible surface or component of any Covered Product contains less than or equal to 1,000 parts per million (“ppm”) of DEHP, DBP, DINP, DIDP, DnHP and 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 a solid substance.

**2.5** “Effective Date” shall mean April 28, 2017.

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

### **3.1 Products No Longer in Alliance’s Control**

To the extent not already done, no later than 15 days after the Effective Date, Alliance shall send a letter, electronic or otherwise (“Notification Letter”) to each California customer to which Alliance, after October 1, 2014, supplied any Covered Products. The Notification Letter shall advise the recipient that the Covered Products “contain DEHP, a chemical known to the State of California to cause birth defects

or other reproductive harm,” and request that the recipient either: (a) label the Covered Products remaining in inventory for sale in California, or sold to California Customers, pursuant to Section 3.2; or (b) return, at Alliance’s sole expense, all units of the Covered Product to Alliance. The Notification Letter shall request a response from the recipient within 15 days after receipt, confirming whether the Covered Products will be labeled or returned. Alliance 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** As of the Effective Date, Alliance shall only manufacture, import, distribute, sell and/or offer for sale in California Covered Products that are “Phthalate Free” pursuant to Section 2.4 above or include the required Proposition 65 consumer health hazard warnings pursuant to Section 3.3 below.

**3.2.2** Alliance represents as a material part of this settlement agreement that it has thoroughly, and in good faith, investigated chemical reformulation of each Covered Product 1 to reduce or eliminate Proposition 65 listed phthalate plasticizers in such Covered Product 1. After this investigation, Alliance has concluded that no substitute chemicals for the listed Proposition 65 constituents of Covered Products are currently available that would allow Alliance to manufacture the Covered Product 1 to its current standards for durability, safety and performance. As such, reformulation is not a viable option at the present time and for the foreseeable future. Instead, Alliance shall continue to maintain a comprehensive customer notification and warning scheme for all Covered Product 1 currently in place as required by this Agreement until reformulation is possible. Alliance agrees that, while it is in no way bound by this Agreement to achieve Covered Product 1 reformulation in the future if reasonable substitute chemicals are not available, it will continue to evaluate alternative formulation of its rainwear products, in good faith, to identify and incorporate reasonable substitute chemicals for the Proposition 65 Listed Chemicals currently utilized in each Covered Product 1.

**3.2.3** As of April 30, 2017, Alliance shall only manufacture, cause to be manufactured, import or cause to be imported for sale in California, or to any retailer that Alliance reasonably understands maintains retail outlets or distribution in California, Covered Product 2 that is “Phthalate Free” pursuant to Section 2.4 Notwithstanding this provision, Alliance shall remain able to sell or otherwise distribute in California inventory of non-reformulated Covered Product 2 obtained before April 30, 2017, so long as it is labeled with a Section 3.3 warning.

### **3.3 Product Warnings**

As a material term of this Agreement, Alliance certifies that it has developed and implemented a Proposition 65 warning program for Covered Products it sells or distributes for sale in California. As of the Effective Date, Alliance shall not sell or ship any Covered Product to a California customer or retailer, or sell or ship any Covered Product 1 or Covered Product 2 to a customer or retailer that Alliance reasonably understands maintains retail outlets in the California, unless such Covered Products are either (1) proven to be Phthalate Free by an accredited laboratory batch test of a post-production unit or (2) shipped with one of the clear and reasonable warnings set forth hereafter.

Each warning utilized by Alliance for Covered Product 1 shall be prominently placed on either (1) the product description tag attached to Covered Product 1, (2) the consumer pricing tag,(3) on the consumer packaging of the product, or (4) on a permanently attached label on the garment, (collectively “labeling”), and placed 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 utilized by Alliance for Covered Product 2 shall be prominently placed on the exterior surface of the clear 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.

(a) **Proposition 65 Warning Label.**

(i) **Covered Product 1 Labeling.** For all non-Phthalate Free Covered Product 1

sold to California or any entity that Alliance reasonably understands either maintains retail outlets in California or is a distributor for any entity that maintains retail outlets in California, Alliance shall affix a warning to the labeling or packaging of the Covered Product that states:

**WARNING:** This product contains PVC (Poly Vinyl Chloride), a compound that contains a phthalate plasticizer known to the State of California to cause cancer and birth defects or other reproductive harm.

**Or:**

**WARNING:** This product can expose you to chemicals including phthalates, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(ii) **Covered Product 2 Labeling.** Alliance has indicated that it is in the process of phasing out its use of DEHP in Covered Product 2 in conjunction with the sales of Covered Product 1. As of the Effective Date, for all non-Phthalate Free Covered Product 2 sold or shipped to California or any entity that Alliance reasonably understands either maintains retail outlets in California or is a distributor for any entity that maintains retail outlets in California, Alliance shall affix a warning to the front (consumer facing) packaging that states:

**WARNING:** This product contains PVC (Poly Vinyl Chloride), a compound that contains a phthalate plasticizer known to the State of California to cause cancer and birth defects or other reproductive harm.

**or:**

**WARNING:** This product packaging can expose you to chemicals including phthalates, which are known to the State of California to cause cancer and birth defects or other reproductive harm. For more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

(b) **Catalog and Internet Sales.** Alliance represents as a material part of this Agreement that it operates as a product wholesaler and does not currently sell Covered Product directly through an ecommerce website or its printed catalog. In such case as Alliance determines to sell any

Covered Product through its own ecommerce website, then Alliance shall include a clear and reasonable warning in conjunction with the display and description on the Alliance website.

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

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

As a condition of settlement of all the claims referred to in this Consent to Judgment, Alliance shall pay a total of \$8,500 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 Alliance 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 Alliance conclusive evidence that the Covered Products not in conformance with Section 3 of this Agreement have been distributed by Alliance in sales volumes materially different than those identified by Alliance prior to execution of this Agreement, then Alliance shall be liable for an additional penalty amount of \$10,000.00. Davia represents that she does not presently have such information. Alliance shall also be liable for any reasonable, additional attorney fees expended by Davia in discovering such additional retailers or sales. Davia agrees to provide Alliance with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Alliance shall have thirty (30) days to agree to the amount of fees and penalties owing by Alliance 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 damages for breach of this contract and the prevailing party in such an 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. Alliance then 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, Alliance shall pay Davia's counsel the amount of \$34,500 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**

Alliance 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, 2015-01137"), 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, 2015-01137") in the amount of \$2,125.

Alliance 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 "2015-01137") in the amount of \$34,500.

All civil penalty and attorney fee/cost payments shall be delivered to plaintiff's counsel at the following address within seven (7) calendar days of execution of this Agreement, so long as Davia has provided all necessary tax information in advance of this date:

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

Alliance 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 fifteen business days of the due date for such payment.

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

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

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

- (a) The first 1099 shall be issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010, Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Sections 4.1 and 4.2;
- (b) The second 1099 shall be issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2, whose address and tax identification number shall be furnished upon request; and
- (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section 4.3.

### **5. RELEASES**

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

**5.1.1** This Agreement is a full, final and binding resolution between Davia, and Alliance of any violation of Proposition 65 that was or could have been asserted by Davia on behalf of herself, or on behalf of her past and current representatives, agents, attorneys, successors and/or assigns ("Releasers") against Alliance, its directors, officers, employees, attorneys, parents, subsidiaries, and affiliated entities under common full or partial ownerships (MIK Industries, Harvik Rubber Industries Sdn Bhd, Beijing Mountain Ltd., and Tatra Safety Footwear Ltd. ), and their predecessors, successors, assigns, and each entity to whom Alliance directly or indirectly distributes or sells Covered Products,

including, but not limited, to retailers, downstream distributors, wholesalers, customers, franchisees, cooperative members, licensors and licensees (“Releasees”), based only on their failure to warn about alleged exposures to DEHP contained in the Covered Products that were manufactured, distributed, sold and/or offered for sale by Alliance in California before the Effective Date. Compliance with the terms of this Agreement constitutes compliance with Proposition 65 by Alliance with regard to the alleged or actual failure to warn about exposure to 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 excepting an action to enforce 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 DEHP in the Covered Products manufactured, distributed, sold and/or offered for sale by Alliance before the Effective Date (collectively “claims”), against Alliance and Releasees.

**5.1.3** Davia also, in her individual capacity, 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 Notice as to Covered Products manufactured, distributed or sold by Alliance 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 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN

BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.

Davia, in her individual capacity expressly waives and relinquishes any and all rights and benefits that she may have under, or which may be conferred on her by the provisions of Section 1542 of the California Civil Code as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, 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.

The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities, other than Alliance and Releasees, 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 Alliance.

## **5.2 Alliance's Release of Davia**

The Release by Davia is mutual. Alliance, 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, arising out of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by Alliance or Releasees or with respect to the Covered Products. Alliance 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.

Alliance 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 Alliance 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 Alliance. 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, Alliance demonstrates that the Covered Product was either (1) sold or offered for sale by Alliance before the Effective Date; (2) that Alliance directed the retailer or distributor of the Covered Product to take corrective action by either removing the Covered Product from sale or by placing an appropriate warning on the Covered Product(s); (3) that the Covered Products are Phthalate Free; or that (4) Alliance provided a warnings for that Covered Product as set out in Section 3.3 of this Agreement.

## **7. POST EXECUTION CONVERSION TO CONSENT JUDGMENT**

Within twelve (12) months of the execution of this Settlement Agreement Alliance may ask Davia, in writing, to file a complaint, incorporate the terms of this Settlement Agreement into a proposed

consent judgment, and to seek the court's approval of the consent judgment pursuant to Health and Safety Code section 25249.7, or as may be otherwise allowed by law. If so requested, Davia agrees to reasonably cooperate with Alliance and to use her best efforts, and that of her counsel, to support the entry of a consent judgment by a superior court in California. Pursuant to Code of Civil Procedure sections 1021 and 1021.5, Alliance will reimburse Davia and her counsel for their reasonable fees and costs incurred in filing the complaint, converting the Settlement Agreement into a proposed consent judgment and seeking judicial approval of the consent judgment, in an amount not to exceed \$12,000.00, exclusive of fees and cost that may be incurred on appeal. Alliance will remit payment to the Sheffer Law Firm, at the address set forth in Section 9 below. Such additional fees shall be paid by Alliance, within ten business days after its receipt of any invoice from Davia for work performed under this paragraph. Alliance understands no motion to approve any proposed consent judgment will be filed absent payment for the work performed under this paragraph. All payments owed to Davia, pursuant to Section 6 shall be delivered to the following payment address:

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

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

## **8. 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.

**9. GOVERNING LAW**

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

**10. 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 Alliance Mercantile, Inc.:

Douglas W. Bell, CEO  
Alliance Mercantile, Inc.  
4620 Campus Place, Suite 200  
Mukilteo, WA 98275

With a copy to their counsel:

Lauren M. Michals  
Nixon Peabody LLP  
One Embarcadero Center, 18th Floor  
San Francisco, CA 94111-3600

For Davia to:

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

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

**11. 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).

**12. MODIFICATION**

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

**13. 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

**14. ATTORNEY'S FEES**

**14.1** 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. § 1021.5.

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

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

**15. 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.


**16. 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.

**17. AUTHORIZATION**

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

**IT IS SO AGREED**

<p>Dated: April __, 2017</p> <p>_____ Douglas W. Bell, CEO Alliance Mercantile, Inc.</p>	<p>Dated: April 19, 2017</p> <p> _____ Susan Davia</p>
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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.

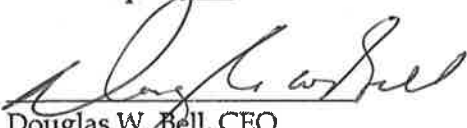

**16. COUNTERPARTS, FACSIMILE SIGNATURES**

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.

**17. AUTHORIZATION**

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

**IT IS SO AGREED**

<p>Dated: April <u>20</u>, 2017</p>  <p>Douglas W. Bell, CEO Alliance Mercantile, Inc.</p>	<p>Dated: April <u>19</u>, 2017</p>  <p>Susan Davia</p>
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