

PROPOSITION 65 SETTLEMENT AGREEMENT
(Susan Davia AG Notice 2016-00404)

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“Agreement” or “Settlement Agreement”) is entered into by and between Susan Davia, (“Davia”) and Pacific Coast Feather Company (“Pacific Coast”) with Davia and Pacific Coast each referred to as a “Party” and collectively referred to as the “Parties.”

1.2 Susan 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 Pacific Coast Feather Company

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

1.4 General Allegations

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

1.5 Notice of Violation

On May 5, 2016, Davia served Pacific Coast and National Sleep Products, 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 Notice 2016-00404). The May 5, 2016, 60-Day Notice of Violation shall be referred to herein as "Notice."

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

1.6 No Admission

This Agreement resolves claims that are denied and disputed by Pacific Coast. 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. Pacific Coast denies the material factual and legal allegations contained in the Notice and Action, maintains that it did not knowingly or intentionally expose California consumers to the Listed Chemicals through the reasonably foreseeable use of the Covered Product and otherwise contends that all Noticed 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 Pacific Coast 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 Pacific Coast of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Pacific Coast. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Pacific Coast'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 Pacific Coast as to the allegations contained in the Complaint, that venue is proper in the County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Agreement. The Parties further stipulate that this Agreement shall be considered a written settlement pursuant to C.C.P. §664.6 and the Marin County Superior Court shall retain jurisdiction over the parties to enforce the settlement until performance in full of the terms of the settlement.

2. DEFINITIONS

2.1 The term "Product" or "Covered Product" shall mean the packaging for the Dr. Maas Sleep For Success! back/stomach, side sleeper, stacker and comfort reader pillows of all sizes.

2.2 The term "Phthalate Free" Covered Products shall mean that each component of each Covered Product contains less than or equal to 1,000 parts per million ("ppm") of di(2-ethylhexyl phthalate) ("DEHP"), dibutyl phthalate ("DBP"), diisononyl phthalate ("DINP"), diisodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP") and butyl benzyl phthalate ("BBP") as determined test results using Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C or equivalent methodologies utilized by and/or approved by State or federal agencies for the purpose of determining DEHP content in a solid substance.

2.3 The Term "California Customer" shall mean any customer with (1) a ship to address in California, (2) a distribution center or retail outlet in California or (3) any customer that Pacific Coast reasonably understands sells Covered Product in California. For purposes of this Agreement, Bed Bath & Beyond, Inc. is a California Customer.

2.4 "Effective Date" shall mean June 1, 2018.

3. NON-MONETARY RELIEF

3.1 Product Reformulation

3.1.1 Pacific Coast represents as a material term of this Agreement that, promptly after receiving Davia's Notice, it investigated the economic and practical feasibility of reformulating the Covered Products to remove or reduce the phthalate content. To the extent not already accomplished, no later than the Effective Date, Pacific Coast shall provide the Phthalate Free phthalate concentration standards of Section 2.2 to its then-current vendors of any Covered Product and request such entities not to incorporate any raw or component materials that do not meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product. Pacific Coast shall maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards for two (2) years after the Effective Date and shall produce such copies to Davia within fifteen (15) days of receipt of reasonable

request made in writing from Davia, as long as such request is made within two (2) years after the Effective Date.

3.1.2 After the Effective Date, Pacific Coast shall provide the Phthalate Free phthalate concentration standards of Section 2.2 to any new vendor of any Covered Product and request such vendor not to incorporate any raw or component materials that do not meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product. Pacific Coast shall maintain copies of all such new vendor correspondence relating to the Phthalate Free concentration standards for two (2) years after the Effective Date and shall produce such copies to Davia within fifteen (15) days of receipt of reasonable request made in writing from Davia, as long as such request is made within two (2) years after the Effective Date.

3.1.3 As of September 1, 2018, Pacific Coast shall not manufacture, cause to be manufactured, order, cause to be ordered or otherwise obtain any Covered Product that is not Phthalate Free. Pacific Coast shall maintain copies of any testing of Covered Products they obtain demonstrating compliance with this Section and shall produce such copies to Davia within fifteen (15) days of receipt of reasonable request made in writing from Davia, as long as such request is made within two (2) years after the Effective Date.

3.2 As a material term of this Agreement, Pacific Coast represents that, as of the Effective Date of this Agreement, all Covered Product distributed to Bed, Bath & Beyond in California that is not Phthalate Free contains a Proposition 65 compliant packaging label meeting the requirements of Section 3.4 of this Agreement.

3.3 Pacific Coast Customer Notification

No later than the Effective Date, Pacific Coast shall send a letter, electronic or otherwise (“Notification Letter”) to (1) each retailer or distributor in California to which it, after January 1, 2016, supplied any Covered Product; (2) any other retailer or distributor in California that Pacific Coast reasonably understands or believes has any inventory of Covered Products; and (3) any other retailer or customer that Pacific Coast reasonably understands or believes has any inventory of Covered

Products and maintains any retail outlet for the sale of Covered Products in California. The Notification Letter shall advise the recipient that Covered Products contain DEHP, a chemical known to the State of California to cause birth defects and other reproductive harm. The Notification letter shall direct recipient that all non-Phthalate Free Covered Product must be labelled with a clear and reasonable Proposition 65 warning before it is sold in the California market or to a California customer. The Notification Letter shall include a sheet of white background¹, adhesive Proposition 65 Warning stickers with the following language to include in the warning label:

WARNING: This packaging contains DEHP,
a chemical known to the State of California to
cause cancer and birth defects or other
reproductive harm.

The Notification Letter shall request written confirmation from the recipient, within 15 days of receipt, that all such non-Phthalate Free inventory for California sale has been, or will be, labelled with the warning language identified in this section. Once the written confirmation request has been made, the Parties acknowledge that Pacific Coast has no continuing obligation or requirement to actually receive any response or confirmation from the recipient or follow-up in any way.

3.3.1 Pacific Coast shall maintain records confirming compliance with § 3.3 for two (2) years from the Effective Date and shall produce copies of such records upon written request by Davia.

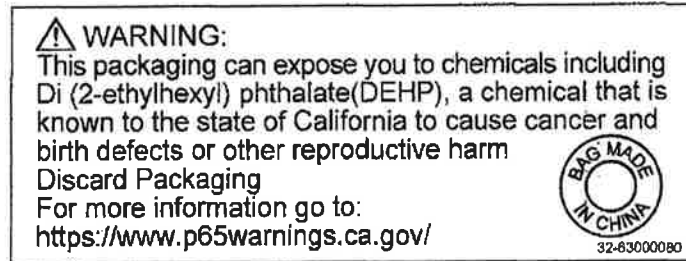
3.4 Existing Inventory Product Packaging Labels

For any inventory of Covered Products obtained by Pacific Coast prior to September 1, 2018, Pacific Coast shall not sell or ship any of such Covered Product that is not Phthalate Free to a California Customer unless such Covered Products are shipped with a product package label that includes the following warning statement:

Each such label utilized by Pacific Coast for any Covered Product shall be prominently placed either on the front, exterior surface of the clear packaging, adjacent to a product pricing label or where other health and safety warnings are located, with such conspicuousness as compared with other

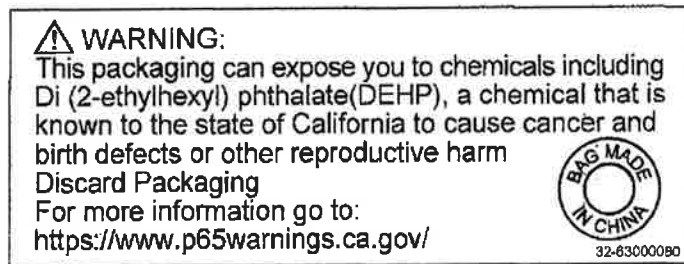
¹ Pacific Coast may use existing inventory of clear background warning labels until depleted.

words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions *before* purchase or use.



3.4.1 Internet Website Warning.

As of the Effective Date, a warning must be given in conjunction with the sale or marketing of any non-Phthalate Free Covered Products by Pacific Coast via the Internet, provided the warning 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. Pacific Coast agrees to use the following warning statement on its website and shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the non-Phthalate Free Covered Product for which it is given in the same type size or larger than the Covered Product description text:



4. MONETARY PAYMENTS

4.1 Civil Penalty

As a condition of settlement of all the claims referred to in this Settlement Agreement, Pacific Coast shall cause to be paid a total of \$6,000 in civil penalties in accordance with California Health &

Safety Code § 25249.12(c)(1) & (d).

4.2 Augmentation of Penalty Payments

For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon Pacific Coast 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 Pacific Coast evidence that the Covered Products have been distributed by Pacific Coast in sales volumes materially different (more than 15%) than those identified by Pacific Coast prior to execution of this Agreement, then Pacific Coast shall be liable for an additional penalty amount of \$10,000.00. Pacific Coast shall also be liable, in accordance with the requirements of Code of Civil Procedure section 1021.5 for any reasonable, additional attorney fees expended by Davia in discovering such additional retailers or sales. Davia agrees to provide Pacific Coast with a written demand for all such additional penalties and attorney fees under this Section. After service of such demand, Pacific Coast shall have thirty (30) days to agree to the amount of fees and penalties owing by Pacific Coast and submit such payment to Davia in accordance with the method of payment of penalties and fees identified in Section 4.1 and 4.4. Should this thirty (30) day period pass without any such resolution between the parties and payment of such additional penalties and fees, Davia shall be entitled to file a formal legal claim for additional civil penalties pursuant to this Section and shall be entitled to all reasonable attorney fees and costs, in accordance with the requirements of Code of Civil Procedure section 1021.5, relating to such claim.

4.3 Reimbursement of Davia's Fees and Costs

The Parties acknowledge that Davia and her counsel offered to resolve this dispute without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee issue to be resolved after the material terms of the agreement had been settled. Pacific Coast 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, Pacific Coast shall cause to be paid to Davia's counsel the amount of \$33,000 for fees and costs incurred investigating, litigating and enforcing this matter. Such payment shall be made payable to "Sheffer Law Firm".

4.4 Payment Procedures

Pacific Coast shall satisfy its obligation to pay civil penalties pursuant to Section 4.1 by delivery of a civil penalty check payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties, 2016-00404"), in the amount of \$4,500 and a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65 Penalties, 2016-00404") in the amount of \$1,500. Davia shall be responsible for delivering to the California Office of Environmental Health Hazard Assessment the civil penalty check payable to OEHHA.

Pacific Coast shall satisfy its obligation to pay attorney fees and costs pursuant to Section 4.3 by delivery of a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2016-00404") in the amount of \$33,000.

Pacific Coast shall satisfy its obligation to pay any civil penalties pursuant to Section 4.2 by civil penalty checks payable to "OEHHA" and "Susan Davia" (Memo line "Prop 65 Penalties, 2016-00404"), in the amounts agreed to pursuant to Section 4.2 or as ordered by the Court.

Pacific Coast shall satisfy its obligation to pay any attorney fees or costs pursuant to Section 4.2 by a check payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2016-00404"), in the amounts agreed to pursuant to Section 4.2 or as ordered by the Court.

All Section 4.1 and Section 4.3 civil penalty and attorney fee/cost payments shall be delivered to plaintiff's counsel within ten (10) business days after June 1, 2018, or the execution of this Agreement, whichever is later, at the following address:

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

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

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

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

Pacific Coast 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 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, Pacific Coast shall cause three separate 1099 forms to be issued, as follows:

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

5. RELEASES

5.1 Davia's Release of Pacific Coast

5.1.1 This Settlement Agreement is a full, final, and binding resolution of any violation of Proposition 65 for unwarned exposures to DEHP from Covered Products manufactured, distributed, sold or distributed for sale in California prior to the Effective Date by (a) Pacific Coast (and its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys); and (b) each entity to whom Pacific Coast distributed or sold the Covered Products including Bed, Bath & Beyond, Inc. ("Releasees").

5.1.2 In further consideration of the promises and agreements herein contained, Davia, acting on her own behalf and in the public interest, releases Pacific Coast and Bed, Bath & Beyond, Inc. from all claims for violations of Proposition 65 with respect to the listed chemical in the Covered Products manufactured, distributed, sold and/or offered for sale by Pacific Coast before the Effective Date as set forth in the 60-day notice of violation to Pacific Coast.

5.1.3 Davia, on her own behalf, also provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all claims, actions and causes of action, of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the notice as to covered products manufactured, distributed or sold by Pacific Coast prior to the Effective Date. Davia acknowledges that she is familiar with section 1542 of the California civil code, which provides as follows:

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

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

5.2 Pacific Coast's Release of Davia

5.2.1 Pacific Coast waives any and all claims against Davia, 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 or otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the Covered Products.

5.2.2 Pacific Coast also provides Davia with 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 any nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject matter of the Action. Pacific Coast acknowledges that each 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.

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

6. POST EXECUTION CONVERSION TO CONSENT JUDGMENT

Within twelve months of the execution of this Settlement Agreement, Pacific Coast 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 Pacific Coast 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, to the extent that Pacific Coast requests Davia to file a complaint as described in this section, Pacific Coast 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 mutually agreed between the parties and not to exceed \$12,000.00, exclusive of fees and cost that may be incurred on appeal. Pacific Coast will remit payment to the Sheffer Law Firm, at the address set forth in Section 9 below. Such additional fees shall be paid by Pacific Coast, within ten business days after its receipt of any invoice from Davia for work performed under this paragraph. Pacific Coast 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 Pacific Coast to timely pay Davia invoices under this Section shall result in the assessment of ten percent (10%) interest on any outstanding balance.

7. SEVERABILITY

If any of the provisions of this Agreement are found by a court to be unenforceable, the validity of the enforceable provisions remaining, after express agreement of the Parties, shall not be adversely

affected, unless the Court finds that any unenforceable provision is not severable from the remainder of the Agreement.

8. GOVERNING LAW

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

9. NOTICES

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

For The Pacific Coast Feather Company:

James Allen, CFO
or current CFO
Pacific Coast Feather Company
1964 4th Ave. South
Seattle, WA 98134

With a copy to their counsel:

Todd O. Maiden
Reed Smith
101 Second Street, Suite 1800
San Francisco, CA 94105
tmaiden@reedsmith.com

For Davia to:

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

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

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

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

11. MODIFICATION

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

12. ENTIRE AGREEMENT

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

13. ATTORNEY'S FEES

13.1 Should Davia or Pacific Coast prevail on any motion, application for order to show cause or other proceeding to enforce a violation of this Agreement, such prevailing party shall be entitled to their reasonable attorney fees and costs incurred as a result of such motion, order or application.

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

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

14. NEUTRAL CONSTRUCTION

Both Parties and their counsel have participated in the preparation of this Agreement and this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and modification by the Parties and has been accepted and approved as to its final form by all Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not be

interpreted against any Party as a result of the manner of the preparation of this Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.


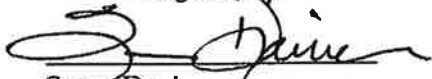
15. COUNTERPARTS, FACSIMILE SIGNATURES

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

16. AUTHORIZATION

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

IT IS SO AGREED

<p>Dated: August ^{September 5}, 2018</p>  <p>James Allen Chief Financial Officer Pacific Coast Feather Company</p>	<p>Dated: August 16 ²², 2018</p>  <p>Susan Davia</p>
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