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

Attorneys for Plaintiff
SUSAN DAVIA

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

SUSAN DAVIA,

Plaintiff,

v.

FRANKTEX, INC. AND DOES 1-150,

Defendants.

Case No. CIV 1901898

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

Action Filed: May 15, 2019
Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This consent to judgment settlement agreement (“Agreement” or “Settlement Agreement”)
4 is entered into by and between Susan Davia (“Davia”), on the one hand, and Franktex, Inc.
5 (“Franktex” or “Defendant”), on the other hand, with Davia and Franktex collectively referred to as
6 the “Parties.”

7 **1.2 Davia**

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

11 **1.3 Franktex**

12 Franktex is a person in the course of doing business for purposes of the Safe Drinking Water
13 and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition
14 65”).

15 **1.4 General Allegations**

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

21 **1.5 Notices of Violation**

22 On December 6, 2018, Davia served Franktex and various public enforcement agencies with
23 a document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed
24 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
25 consumers of the presence of the Listed Chemical found in the Covered Products (defined
26 hereafter) sold in California (AG Notice 2018-02194). The December 6, 2018, 60-Day Notice of
27 Violation served on Franktex shall be referred to herein as “Notice.”

28 Franktex received the Notice. Franktex represents that, as of the date it executes this

1 Agreement, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65
2 enforcement action related to the Listed Chemical in the Covered Products, as identified in the
3 Notice.

4 **1.6 Complaint**

5 On May 15, 2019, Davia filed a Complaint in the Superior Court of the State of California for
6 the County of Marin, Case No. CIV 1901898, alleging violations by Franktex of Health and Safety
7 Code § 25249.6 based on the alleged exposures to the Listed Chemical in the Covered Products (the
8 “Action”).

9 **1.7 No Admission**

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

24 **1.8 Consent to Jurisdiction**

25 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
26 Court has jurisdiction over Franktex as to the allegations in the 60-Day Notice received from Davia,
27 and this Agreement and that venue is proper in County of Marin. The Parties further stipulate that
28 this Agreement shall be deemed made pursuant to Code of Civil Procedure Section 664.6 and that

1 the Marin County Superior Court has jurisdiction over the parties to enforce the Agreement until
2 performance in full of its terms.

3 **2. DEFINITIONS**

4 **2.1** The term “Product” or “Covered Product” shall mean all Franktex Home bedding,
5 including, but not limited to SOHO Down Alternative Comforter (all sizes), Casual Comfort
6 bedspread/shams (all sizes). The term “Covered Packaging” shall mean all vinyl/PVC product
7 packaging or storage cases in which Covered Products are sold to consumers.

8 **2.2** The term “Phthalate Free” Covered Packaging shall mean that each vinyl component
9 of each Covered Packaging contains less than or equal to 1,000 parts per million (“ppm”) of di(2-
10 ethylhexyl) phthalate (“DEHP”), dibutyl phthalate (“DBP”), diisononyl phthalate (“DINP”),
11 diisodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”) and butyl benzyl phthalate (“BBP”)
12 as determined test results using Environmental Protection Agency (“EPA”) testing methodologies
13 3580A and 8270C.

14 **2.3** “California Customer” shall mean a customer with a California ship to address, a
15 retail customer with any retail store located in California, and ecommerce entity that Franktex
16 understands sells goods to any individual or entity located in California or to any other entity that
17 Franktex has reason to know will sell the Covered Product to any individual or entity located in
18 California.

19 **2.4** “Effective Date” shall mean May 1, 2019.

20 **3. INJUNCTIVE-TYPE RELIEF**

21 **3.1 Product Reformulation Commitment**

22 **3.1.1** No later than the Effective Date, Franktex shall provide the Phthalate Free phthalate
23 concentration standards of Section 2.2 to its then-current vendors of any Covered Product that is
24 sold in Covered Packaging, and any direct vendor of Covered Packaging, and instruct such entities
25 not to provide any Covered Packaging that does not meet the Phthalate Free concentration
26 standards of Section 2.2. Franktex shall maintain copies of all vendor correspondence relating to
27 the Phthalate Free concentration standards for two (2) years after the Effective Date and shall
28 produce such copies to Davia within fifteen (15) days of receipt of reasonable request made in

1 writing from Davia.


2 **3.1.2** On and after the Effective Date, Franktex shall provide the Phthalate Free phthalate
3 concentration standards of Section 2.2 to any New Vendors of any Covered Product or direct
4 vendors of Covered Packaging and instruct such entities not to provide any Covered Packaging
5 that does not meet the Phthalate Free concentration standards of Section 2.2. "New Vendors"
6 means vendors of Covered Products or Covered Packaging from whom Franktex was not obtaining
7 Covered Products or Covered Packaging before the Effective Date. Prior to purchase and
8 acquisition of any Covered Product or Covered Packaging from any New Vendor, Franktex shall
9 obtain written confirmation and laboratory test result from the New Vendor demonstrating
10 compliance with the Phthalate Free phthalate concentration standard for any Covered Packaging.
11 For two (2) years after the Effective Date, for every Covered Product sold in Covered Packaging or
12 Covered Packaging Franktex manufactures, causes to be manufactured, orders, causes to be
13 ordered or otherwise obtains from a New Vendor , Franktex shall maintain copies of all testing of
14 such products demonstrating compliance with this section, shall maintain copies of all vendor
15 correspondence relating to the Phthalate Free concentration standards and shall produce such
16 copies to Davia within fifteen (15) days of receipt of reasonable request made in writing from
17 Davia.

18 **3.1.3** As of June 1, 2019, Franktex shall not manufacture, cause to be manufactured, order
19 or cause to be ordered any Covered Packaging or Covered Product with Covered Packaging that is
20 not Phthalate Free. For every Covered Packaging or Covered Product with Covered Packaging
21 Franktex manufactures, causes to be manufactured, orders, causes to be ordered or otherwise sells
22 after the Effective Date, Franktex shall, for a period of two (2) years after placing the order,
23 maintain copies of all testing of the packaging demonstrating compliance with this section, shall
24 maintain copies of all vendor correspondence relating to the Phthalate Free concentration standards
25 of Section 2.2 and shall produce such copies to Davia within fifteen (15) days of receipt of
26 reasonable request made in writing from Davia.


27 **3.2 Previously Distributed Covered Products.**

28 **3.2.1** Customer Notification - No later than the Effective Date, Franktex shall send a letter,

1 electronic or otherwise (“Notification Letter”) to: (1) each retailer or distributor in California to
2 which it, after July 1, 2018, supplied any Covered Product with Covered Packaging, and (2) any
3 other retailer or distributor in California that Franktex reasonably understands or believes has any
4 inventory of Covered Products with Covered Packaging. The Notification Letter shall advise the
5 recipient that Covered Packaging for Covered Products contains DEHP, a chemical known to the
6 State of California to cause cancer and birth defects or other reproductive harm. The Notification
7 letter shall inform the recipient that all Covered Packaging must either have a label attached to the
8 packaging or on a shelf sign proximate to the display of Covered Product expressly referring to the
9 Covered Product, which label or sign contains one of the following warnings, before it is sold in the
10 California market or to a California customer. The Notification Letter shall include a sheet of white
11 background, adhesive stickers with one of the following warning statements in no less than Book
12 Antiqua, point 9 font (or its equivalent):

13
14  **WARNING:** The vinyl packaging for
15 this product can expose you to chemicals,
16 including di(2-ethylhexyl)phthalate, that are
17 known to the State of California to cause
18 cancer and birth defects or other
19 reproductive harm. For more information go
20 to www.P65Warnings.ca.gov;

21 or

22  **WARNING:** for the vinyl packaging in
23 which this product is sold - Cancer and
24 Reproductive Harm -
25 www.P65Warnings.ca.gov

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

3.2.2 Settling Defendant shall maintain records of compliance correspondence, inventory
reports or other communication confirming compliance with § 3.2.1 for two (2) years from the
Effective Date and shall produce copies of such records upon reasonable written request by Davia.

1 **3.3 Existing Inventory Product Packaging Labels**

2 For any inventory of Covered Products with Covered Packaging ordered by Franktex before
3 June 1, 2019, Franktex shall not sell or ship any of such Covered Product unless the accompanying
4 Covered Packaging is confirmed to be Phthalate Free or Franktex has complied with all warning
5 requirements set forth in this Section 3.3.

6 **3.3.1 Covered Packaging Label.**

7 For all Covered Products with non-Phthalate Free Covered Packaging sold to a California
8 Customer, Franktex shall affix a label to the Covered Packaging that states:

9
10 **⚠WARNING:** The vinyl packaging for
11 this product can expose you to chemicals,
12 including di(2-ethylhexyl)phthalate, that are
13 known to the State of California to cause
14 cancer and birth defects or other
15 reproductive harm. For more information go
16 to www.P65Warnings.ca.gov;

17 or

18 **⚠WARNING:** for the vinyl packaging in
19 which this product is sold - Cancer and
20 Reproductive Harm -
21 www.P65Warnings.ca.gov

22 The label shall be prominently affixed with such conspicuousness as compared with other words,
23 statements, designs, or devices, as to render it likely to be read and understood by an ordinary
24 individual under customary conditions *before* purchase or use.

25 **3.3.2 Internet Website Warning.**

26 Franktex represents, as a material term of this Agreement, that it does not currently
27 sell Covered Products with Covered Packaging direct to consumers via an ecommerce website. In
28 such case as Franktex commences direct sales of Covered Products with Covered Packaging that is
not Phthalate Free to consumers via an ecommerce website, then Franktex shall include one of the
warning messages from Section 3.3.1 in conjunction with such sale, provided it appears either: (a)
on the same web page on which a Covered Product is displayed; (b) on the same web page as the

1 order form for a Covered Product; or (c) on the same page as the price for any Covered Product.

2 **4. MONETARY PAYMENTS**

3 **4.1 Civil Penalty**

4 As a condition of settlement of all the claims referred to in this Settlement Agreement,
5 Franktex shall cause to be paid a total of \$6,000 in civil penalties in accordance with California
6 Health & Safety Code § 25249.12(c)(1) & (d).

7 **4.2 Augmentation of Penalty Payments**

8 For purposes of the penalty assessment under this Agreement, Davia is relying entirely
9 upon Franktex and its counsel for accurate, good faith reporting to Davia of the nature and
10 amounts of sales activity of the Covered Products. If within nine (9) months of the Effective Date,
11 Davia discovers and presents to Franktex evidence that the Covered Products have been distributed
12 in California by Franktex in sales volumes materially different (more than 25%) than those
13 identified by Franktex prior to execution of this Agreement, then Franktex shall be liable for an
14 additional penalty amount of \$10,000.00. Franktex shall also pay reasonable, additional attorney
15 fees expended by Davia in discovering such additional sales and reporting them to Franktex in
16 accordance with this section. Davia agrees to provide Franktex with a written demand for such
17 additional penalties and attorney fees under this Section. After service of such demand, Franktex
18 shall have thirty (30) days to pay the additional civil penalties amount demanded or negotiate with
19 Davia as to an agreed amount of fees and penalties to be paid in accordance with the method of
20 payment of penalties and fees identified in Section 4.4. Should the Parties fail to reach an
21 agreement within thirty (30) days, Davia shall be entitled to file an action for breach of this
22 Agreement in which the sole issues for resolution by the Court shall be: (1) whether Covered
23 Products were distributed in California by Franktex in sales volumes materially different (more
24 than 25%) than those identified by Franktex prior to execution of this Agreement; and (2) if the
25 Court finds in favor of Davia on issue no. 1, the amount of legal fees Davia is entitled to recover for
26 discovering the additional sales and reporting them to Franktex in accordance with this section. In
27 any action brought under this Section 4.2, the prevailing party shall be entitled to recover its
28 attorney's and other fees and costs.

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4.3 Reimbursement of Davia’s Fees and Costs

The Parties acknowledge that Davia and her counsel declined to consider any reimbursement of plaintiff’s fees or costs until all other terms of the settlement were reached. The Parties then reached an accord on the reimbursement due to Davia and compensation of her counsel under general contract principles and consistent with the private attorney general doctrine codified at California Code of Civil Procedure section 1021.5, in the amount of \$29,000 for fees and costs incurred investigating and negotiating a resolution of this matter.

4.4 Payment Procedures

No later than fifteen (15) days after execution of this Agreement, Franktex shall deliver all settlement payment funds required by this Agreement to its counsel. Within one (1) week of receipt of the settlement funds, Franktex’s counsel shall confirm receipt in writing to plaintiff’s counsel and, thereafter, hold Franktex’s settlement checks or payment(s) until such time as the Court approves this settlement as contemplated by Section 6. Within five (5) business days of the date plaintiff provides electronic mail notice to counsel for Franktex that the Court has approved this settlement, Franktex’s counsel shall deliver the settlement payments to plaintiff’s counsel as follows:

- a civil penalty check payable to “OEHHA” (Memo line “Prop 65 Penalties, 2018-02194”), in the amount of \$4,500;
- a civil penalty check payable to “Susan Davia” (Memo line “Prop 65 Penalties, 2018-02194”) in the amount of \$1,500; and
- an attorney fee and cost reimbursement check payable to “Sheffer Law Firm” (Memo line “2018-02194”) in the amount of \$29,000.

All Section 4.1 and Section 4.3 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
81 Throckmorton Ave., Suite 202
Mill Valley, CA 94941

All Section 4.2 civil penalty and attorney fee/cost payments, if any, shall be delivered to

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

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

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

10 **4.5 Issuance of 1099 and W-9 Forms**

11 No later than five (5) days after any request by defendant, Davia and her counsel will
12 provide W-9 forms to Franktex for Susan Davia and Sheffer Law Firm.

13 After this Agreement has been executed and settlement funds have been transmitted to
14 Davia's counsel at the address set forth in Section 4.4., Franktex shall cause three separate 1099
15 forms to be issued, as follows:

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

19 (b) The second 1099 shall be issued to Davia in the amount paid pursuant to
20 Sections 4.1 and 4.2 (if any), whose address and tax identification number shall be
21 provided to Franktex prior to any payments being due under this Agreement; and

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

24 **4.6 Delayed or Non-Payment of Civil Penalties or Attorney Fees**

25 While the obligations of this agreement are binding upon execution, the Release of Southern
26 Technologies shall not become effective until after all Section 4.1 and Section 4.3 monetary
27 payments have been made by Southern Technologies and all funds have cleared.
28

1 **5. RELEASES**

2 **5.1 DAVIA'S RELEASE OF FRANKTEX**

3 **5.1.1** This settlement agreement is a full, final and binding resolution between
4 Davia, and Franktex of any violation of Proposition 65 that was or could have been asserted by
5 Davia on behalf of herself, her representatives or attorneys, against Franktex, its directors, officers,
6 employees, attorneys, parents and each entity to whom Franktex directly or indirectly distributes or
7 sells Covered Products, including, but not limited to downstream distributors and retailers
8 ("Releasees"), based on their alleged failure to warn about alleged exposures to the Listed Chemical
9 contained in the Covered Packaging accompanying any Covered Products that were sold by
10 Franktex to a California Customer before the Effective Date. As to Davia only, Franktex's
11 compliance with the terms of this Agreement shall constitute compliance with Proposition 65 as to
12 exposures to DINP, DIDP, DEHP, DBP, BBP and DnHP in the Covered Products and Covered
13 Packaging.

14 **5.1.2** Davia also provides a general release and waiver which shall be effective as a full
15 and final accord and satisfaction, and as a bar to all claims, actions and causes of action, of any
16 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject
17 matter of Franktex' sale or distribution of Covered Products with Covered Packaging prior to the
18 Effective Date. Davia acknowledges that she is familiar with section 1542 of the California Civil
19 Code, which provides as follows:

20 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
21 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
22 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
23 RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
24 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
25 DEBTOR OR RELEASED PARTY.

26 Davia, in her individual capacity expressly waives and relinquishes any and all rights and
27 benefits that she may have under, or which may be conferred on her by the provisions of Section
28 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

1 pertaining to the released matters. In furtherance of such intention, the release hereby given shall
2 be and remain in effect as a full and complete release notwithstanding the discovery or existence of
3 any such additional or different claims or facts arising out of the released matters.

4 This Section 5 release shall not release any obligations created by or set forth in this
5 Agreement. The Parties further understand and agree that this Section 5 release shall not extend
6 upstream to any entities, other than Franktex, that manufactured any Covered Packaging, Covered
7 Product or any component parts thereof, or any distributors or suppliers who sold Covered
8 Packaging, Covered Products or any component parts thereof to Franktex.

9 **5.2 FRANKTEX RELEASE OF DAVIA**

10 Franktex, on behalf of itself and its agents, representatives, attorneys, successors, and/or
11 assignees, hereby waives any and all claims against Davia and her attorneys and other
12 representatives, for any and all actions taken or statements made (or those that could have been
13 taken or made) by Davia and her attorneys and other representatives arising out of the subject
14 matter of the Notice, the Covered Products, and the Covered Packaging, whether in the course of
15 investigating claims in this matter, otherwise seeking to enforce Proposition 65 against Franktex
16 and Releasees in this matter, or negotiating this Agreement. Franktex acknowledges that it is
17 familiar with Section 1542 of the California Civil Code, which provides as follows:

18 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE
19 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
20 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
21 RELEASE, AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
22 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
23 DEBTOR OR RELEASED PARTY.

24 Franktex expressly waives and relinquishes any and all rights and benefits which it may
25 have under, or which may be conferred on it by the provisions of Section 1542 of the California
26 Civil Code as well as under any other state or federal statute or common law principle of similar
27 effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the
28 released matters identified in this Section 5.2. In furtherance of such intention, the release hereby

1 given shall be and remain in effect as a full and complete release notwithstanding the discovery or
2 existence of any such additional or different claims or facts arising out of the released matters.

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

5 **6. COURT APPROVAL**

6 This Agreement is effective upon execution but must also be approved by the Court. If the
7 Court does not approve this Agreement in its entirety, the Parties shall meet and confer to
8 determine whether to modify the terms of the Agreement and to resubmit it for approval. In
9 meeting and conferring, the Parties agree to negotiate in good faith in an effort to reach agreement
10 on any actions reasonably necessary to amend and/or modify this Agreement in order to further
11 the mutual intention of the Parties in entering into this Agreement. The Agreement shall become
12 null and void if, for any reason, it is not approved and entered by the Court, as it is executed, within
13 one year after it has been fully executed by all Parties. The Parties agree that, upon Court approval,
14 a Court judgment shall be entered on the terms of this Agreement.

15 **7. SEVERABILITY**

16 If any of the provisions of this Agreement are found by a court to be unenforceable, the
17 validity of other provisions of this Agreement, upon express consent of all Parties, shall not be
18 affected and shall remain in full force and effect.

19 **8. GOVERNING LAW**

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

21 **9. NOTICES**

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

24 **For Franktex:**

25
26 Frank Tsang, CEO
27 Franktex, Inc.
1683 Galvez Ave.
28 San Francisco CA 94124

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and its counsel:

Michael J. Gleason
Hahn Loeser & Parks LLP
One America Plaza
600 West Broadway, Suite 1500
San Diego, CA 92101
mgleason@hahnlaw.com

For Davia:

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 of 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 or relied on by any Party hereto (other than the sales figures provided to Davia). 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

1 Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether
2 or not similar, nor shall such waiver constitute a continuing waiver

3 **13. ATTORNEY'S FEES**

4 **13.1** In any dispute concerning any matter related to this Agreement, the prevailing
5 Party shall be entitled to recover its costs and expenses, including attorneys' fees and costs.
6 Except as otherwise specifically provided herein, each Party shall bear its own costs and
7 attorney's fees in connection with the Notices. Nothing in this Section shall preclude a Party
8 from seeking an award of sanctions pursuant to law.

9 **14. NEUTRAL CONSTRUCTION**

10 Both Parties and their counsel have participated in the preparation of this Agreement
11 and this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to
12 revision and modification by the Parties and has been accepted and approved as to its final form
13 by each of the Parties. Accordingly, any uncertainty or ambiguity existing in this Agreement
14 shall not be interpreted against any Party as a result of the manner of the preparation of this
15 Agreement. Each Party to this Agreement agrees that any statute or rule of construction
16 providing that ambiguities are to be resolved against the drafting Party should not be employed
17 in the interpretation of this Agreement and, in this regard, the Parties hereby waive California
18 Civil Code Section 1654. The Parties further agree that the section headings are for convenience
19 only and shall not affect interpretation of this Agreement.

20 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

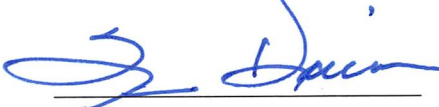
21 This Agreement may be executed in counterparts and by facsimile or portable document
22 format (PDF), each of which shall be deemed an original, and all of which, when taken together,
23 shall constitute one and the same document. Signatures by scanned and e-mailed image or
24 facsimile transmission shall have the same force and effect as original signatures and as an
25 electronic record executed and adopted by a Party with the intent to sign the electronic record
26 pursuant to Civil Code §§ 1633.1 *et seq.*

27 **16. AUTHORIZATION**

28 Each of the persons signing this agreement represents and warrants that he or she is

1 authorized and has the capacity to execute this Agreement on behalf of their respective Party
2 and has read, understood, and agrees to all of the terms and conditions of this Agreement on
3 behalf of such Party.

4 **IT IS SO AGREED**

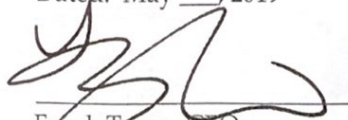
<p>6 Dated: May __, 2019</p> <p>7</p> <p>8 _____</p> <p>9 Frank Tsang, CEO Franktex, Inc.</p>	<p>6 Dated: May <u>15</u>, 2019</p> <p>7</p> <p>8 </p> <p>9 Susan Davia</p>
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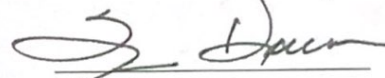
1 authorized and has the capacity to execute this Agreement on behalf of their respective Party
2 and has read, understood, and agrees to all of the terms and conditions of this Agreement on
3 behalf of such Party.

4 IT IS SO AGREED

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6 Dated: ~~May~~ **June 6, 2019**, 2019

7 
8 Frank Tsang, CEO
9 Franktex, Inc.

6 Dated: May 15, 2019

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8 Susan Davia

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