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SHEFFER LAW FIRM
2 81 Throckmorton Ave., Suite 202
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4 Attorneys for Plaintiff
5 SUSAN DAVIA

FILED

AUG 16 2017

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: C. Lucchesi, Deputy

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

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 WHITMOR, INC. and DOES 1-150,

16 Defendants.

Case No. CIV1701729

**JUDGMENT ON PROPOSITION 65
SETTLEMENT**

Case Filed: May 12, 2017

Trail Date: None Assigned

1 In the above-entitled action, Plaintiff Susan Davia and Defendant Whitmor, Inc., having
2 agreed through their respective counsel that a judgment be entered pursuant to the terms of the
3 Settlement Agreement and Consent to Judgment entered into by the parties in resolution of this
4 Proposition 65 action, and following the issuance of an order approving the Parties' Settlement
5 Agreement and Stipulation to Judgment on this day, IT IS HEREBY ORDERED, ADJUDGED AND
6 DECREED that pursuant to Health & Safety Code § 25249.7(f)(4) and Code of Civil Procedure §
7 664.6, judgment is hereby entered in accordance with the terms of the Consent to Judgment
8 attached hereto as Exhibit A. By stipulation of the parties, the Court will retain jurisdiction to
9 enforce the settlement under Code of Civil Procedure § 664.6.

10 **IT IS SO ORDERED.**

AUG 16 2017

11 Dated: _____

ROY O. CHERNUS

Honorable Roy O. Chernus
Judge Of The Superior Court

EXHIBIT A

1 Gregory M. Sheffer, Esq., State Bar No. 173124
2 SHEFFER LAW FIRM
3 81 Throckmorton Ave., Suite 202
4 Mill Valley, CA 94941
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6 Facsimile: (415) 388-9911

7 Attorneys for Plaintiff
8 SUSAN DAVIA

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

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 WHITMOR, INC. and DOES 1-150,

16 Defendants.

Case No. CIV 1701729

**CONSENT TO JUDGMENT AS TO
DEFENDANT WHITMOR, INC.**

Action Filed: May 12, 2017
Trial Date: None Assigned

1 **1.** INTRODUCTION

2 **1.1** The Parties

3 This Consent to Judgment Settlement Agreement (“Agreement”) is entered into by and
4 between Plaintiff Susan Davia, (“Davia”) and defendant Whitmor, Inc. (hereafter, “Whitmor” or
5 “Defendant”), with Davia and Whitmor collectively referred to as the “Parties.”

6 **1.2** Plaintiff

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

10 **1.3** Defendant

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

14 **1.4** General Allegations

15 Davia alleges that Whitmor participated in the manufacture (or other acquisition),
16 distribution and sale, in the State of California, of Whitmor brand coated clothing hanger products
17 containing phthalates, which products exposed users to Di(2-ethylhexyl)phthalate (“DEHP”),
18 Diisononyl Phthalate (DINP), and Dibutyl Phthalate (DBP) without first providing “clear and
19 reasonable warning” under Proposition 65. DEHP, DINP, and DBP are listed as carcinogens and/or
20 reproductive toxins pursuant to Proposition 65. DEHP, DINP, and DBP shall hereinafter be referred
21 to as the “Listed Chemicals.”

22 **1.5** Notices of Violation

23 On October 11, 2016, Davia served Whitmor, Inc., Amazon.com Inc. and various public
24 enforcement agencies with a Proposition 65 60-day Notice of Violation, together with a Certificate of
25 Merit (“Notice”), that provided public enforcers and these entities with notice of alleged violations
26 of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP in and on
27 their vinyl-coated clothing hanger products (AG Notice 2017-00559).

28 On April 20, 2017, Davia served Whitmor, Inc. and various public enforcement agencies with

1 a Proposition 65 60-day Notice of Violation, together with a Certificate of Merit (“Supplemental
2 Notice”), that provided public enforcers and these entities with notice of alleged violations of
3 Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP, DINP and
4 DBP in and on their vinyl-coated clothing hanger products (AG Notice 2017-00559).

5 Whitmor received the Notice and Supplemental Notice. The Parties represent that, as of the
6 date each executes this Agreement, they believe that no public enforcer is diligently prosecuting a
7 Proposition 65 enforcement action related to the Listed Chemicals in the Covered Products, as
8 identified in the Notice and Supplemental Notice.

9 **1.6 Complaint and First Amended Complaint**

10 On May 12, 2017, Davia, acting in the interest of the general public in California, filed a
11 Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV
12 1701729, alleging violations by Whitmor and Does 1-150 of Health & Safety Code § 25249.6 based,
13 *inter alia*, on the alleged exposures to DEHP contained in certain vinyl-coated clothing hanger
14 products.

15 As part of, and upon execution of, this Agreement, the Parties stipulate and agree that the
16 Complaint shall and will be amended to include the Parties, recitals, and allegations against
17 Whitmor of Davia’s claims relating to the Listed Chemicals in the vinyl-coated clothing hanger
18 products identified in the Supplemental Notice, and that such First Amended Complaint (“FAC”)
19 will be filed with the Court.

20 The Parties agree that this FAC shall be presented for approval to the Court as part of and in
21 conjunction with the motion to approve this Agreement. Whitmor agrees that inclusion of the FAC
22 in the motion to approve settlement and approve the FAC shall be deemed service of the FAC on
23 Whitmor, which service is accepted by Whitmor. If Whitmor has already filed an Answer to the
24 initial Complaint by the time any Motion to Approve this settlement is heard, Whitmor stipulates to
25 waive any further response to such FAC, stipulates that the FAC shall be deemed at issue as to such
26 Settling Defendant upon approval of the settlement and stipulates that Whitmor’s initial Answer
27 shall also constitute Whitmor’s response to the FAC.

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1.7 No Admission

This Agreement resolves claims that are denied and disputed by Whitmor. 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. Whitmor 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 Whitmor 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 Whitmor of any fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by Whitmor. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Whitmor’s obligations, responsibilities, and duties under this Agreement.

1.8 Consent to Jurisdiction

For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction over Whitmor as to the allegations contained in the Complaint, that venue is proper in County of Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Agreement. As an express part of this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was filed 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 “Complaint” shall mean the May 12, 2017, Complaint, Marin County Superior Court Case No. CIV 1701729.

2.2 The term “Effective Date” shall mean the date on which this Agreement is executed by the parties.

2.3 The term “Products” or “Covered Products” shall mean all Whitmor brand PVC/vinyl-coated clothing hanger products, including, but not limited to the following products:

1 6021-101 - Suit Hangers S/4 w/ Accessory Hook
2 6021-181-D - Deluxe Add On Skirt & Slack Hangers S/3
3 6021-182 - Deluxe Add-On Skirt & Blouse Hangers S/2
4 6021-183 - Deluxe Slack Hanger S/3
5 6021-184 - Swing Arm Slack Hanger
6 6021-185 - 4 Tier Folding Skirt Hanger
7 6021-187 - Swivel Tie Hanger w/Belt Hooks
8 6021-188-Sh - OTD Hanger Holder
9 6021-189 - 10 Hook Accessory Hanger
10 6021-190 - Belt Ring Hanger
11 6021-199 - Deluxe 5 Tier Slack Hanger
12 6021-200 - OTD Storage Hooks
13 6021-217 - Skirt & Slack Hangers S/2
14 6021-292 - OTD Add-On Valet
15 6021-378 - Double Closet Rod
16 6021-5079 - Folding Scarf Hanger
17 6021-711 - 4 Tier Blouse Hanger
18 6022-1725 - Slack Hangers S/2
19 6022-200 - OTD Storage Hooks
20 6022-3291 - OTD 6 Hook Rack
21 6022-543 - OTD Double Hook
22 6022-544 - OTD Valet Hook
23 6022-5572-10 - Everyday Hangers S/10
24 6100-1150 - Chrome & Foam Shirt/Blouse Hangers S/3
25 6100-1152 - Chrome & Foam Tie Hanger With Belt Hooks
26 6100-5266 - Chrome & Foam Slack Hangers S/3
27 6100-592 - Chrome & Foam Skirt/Slack Hangers S/3
28

2.4 The term “Phthalate Free” shall mean less than or equal to 1,000 parts per million (“ppm”) of DEHP, DBP, DINP, DIDP, DnHP, DNOP, and BBP, in any component of any Covered Product, determined by duplicate quality controlled tests using Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C, Consumer Product Safety Commission (“CPSC”) Method CPSC-CH-C1001-09.3, or an equivalent or similar methodology utilized by the California or Federal government to determine the presence and measure the quantity of the above-listed phthalates.

3. NON-MONETARY RELIEF

3.1 New Product Reformulation Commitment

3.1.1 No later than the Effective Date, Whitmor shall provide the Phthalate Free phthalate concentration standards of Section 2.4 to the manufacturers or vendors that supply any Covered Product and the vinyl coating component thereof (if known) to Whitmor and instruct each such entity not to incorporate any raw or component materials that do not meet the Phthalate Free

1 concentration standards of Section 2.4 into any Covered Product. Whitmor shall maintain copies of
2 all vendor correspondence relating to the phthalate concentration standards and shall produce such
3 copies to Davia within fifteen (15) days of receipt of written request from Davia.

4 **3.1.2** After the Effective Date, Whitmor shall provide the Phthalate Free phthalate
5 concentration standards of Section 2.3 to any new manufacturer or vendor that supplies the Covered
6 Product and the vinyl component thereof (if known) to Whitmor and instruct such manufacturer or
7 vendor not to incorporate any raw or component materials that do not meet the Phthalate Free
8 concentration standards of Section 2.3 into any Covered Product. Prior to purchase or other
9 acquisition of any Covered Product from any new manufacturer or vendor, Whitmor shall obtain a
10 written confirmation and accompanying laboratory test result from the new vendor demonstrating
11 the Covered Product complies with the Phthalate Free phthalate concentration standard. For every
12 Covered Product Whitmor obtains from a new vendor after Effective Date, Whitmor shall maintain
13 copies of all testing of such products demonstrating compliance with this section, shall maintain
14 copies of all vendor correspondence relating to the Phthalate Free concentration standards and shall
15 produce such copies to Davia within fifteen (15) days of receipt of written request from Davia.

16 **3.1.3** With the exception of existing inventory addressed in Section 3.2, as of the Effective
17 Date of this Agreement, Whitmor shall not manufacture or cause to be manufactured, order or cause
18 to be ordered, or otherwise obtain for distribution any Covered Product that is not Phthalate Free.

19 **3.2 Product Warning for Existing Inventory**

20 As of June 30, 2017, Whitmor shall not sell or ship any inventory of Covered Product,
21 obtained by Whitmor prior to the Effective Date (“Existing Inventory”), to a California vendor or
22 retailer or to a vendor or retailer that Whitmor reasonably understands makes sales to customers
23 located in California, including, but not limited to, Amazon.com, Walmart.com, and Sears.com,
24 unless such Covered Products are confirmed to be Phthalate Free or are sold or shipped with one of
25 the clear and reasonable warnings set forth hereafter.

26 The following language must be used for any warnings required under this Section 3.3
27 (“Warning”):

28 **WARNING:** This product can expose you to Di(2-ethylhexyl)phthalate (DEHP), which is known

1 to the State of California to cause cancer and
2 birth defects or other reproductive harm. For
3 more information go to
4 www.P65Warnings.ca.gov.

5 Each Warning shall be prominently displayed with such conspicuousness as compared with
6 other words, statements, designs, or devices as to render it likely to be read and understood by an
7 ordinary individual under customary conditions *before* purchase or use.

8 (a) **On-Product Labeling.** After June 30, 2017, for so long as Whitmor maintains
9 or controls any Existing Inventory of Covered Product that is not Phthalate Free, Existing Inventory
10 of Covered Product that is not Phthalate Free, Whitmor may sell or offer for sale Covered Product in
11 California only if Whitmor affixes a warning compliant with this section to any such Covered
12 Product sold to a California vendor or retailer or to a vendor or retailer that Whitmor reasonably
13 understands makes sales to customers located in California, including, but not limited to,
14 Amazon.com, Walmart.com, and Sears.com.

15 (b) **Internet Sales.** After June 30, 2017, for so long as Whitmor maintains or
16 controls any Existing Inventory of Covered Product that is not Phthalate Free, Whitmor may sell or
17 offer for sale Covered Product on the Internet only if Whitmor (1) places a Warning on the product
18 display page, (2) places a Warning on a page that is accessible via a clearly marked hyperlink using
19 the word "WARNING" on the product display page, or (3) otherwise prominently displays a
20 Warning to the purchaser prior to completing the purchase.

21 (c) **Catalog Sales.** After June 30, 2017, for so long as Whitmor maintains or
22 controls any Existing Inventory of Covered Product that is not Phthalate Free, Whitmor shall
23 include a Warning in any mail order catalog offering such Covered Product for sale that clearly
24 associates the Warning with each such Covered Product included in the catalog.

25 **4. MONETARY PAYMENTS**

26 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

27 As a condition of settlement of all the claims referred to in this Consent to Judgment,
28 Whitmor shall pay a total of \$10,000 in civil penalties in accordance with California Health & Safety
Code § 25249.12(c)(1) & (d).

1 **4.2 Augmentation of Penalty Payments**

2 For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon
3 defendant and its counsel for accurate, good faith reporting to Davia of the nature and amounts of
4 relevant sales activity. If within nine (9) months of the Effective Date, Davia discovers and presents
5 to Whitmor evidence that the Covered Products have been distributed by Whitmor in sales volumes
6 materially different than those identified by Whitmor prior to execution of this Agreement, then the
7 Parties shall have a period of thirty (30) days to meet and confer concerning such evidence, and
8 Whitmor shall have the opportunity to present to Davia any evidence to the contrary. If the Parties
9 can agree on an appropriate disposition, then Whitmor shall submit payment of any agreed
10 additional civil penalties and attorneys' fees within thirty (30) days in accordance with the method
11 of payment of penalties and fees identified in Section 4.1 and 4.4. Should this thirty (30) day period
12 pass without any such resolution between the Parties and payment of such additional penalties and
13 fees, Davia shall be entitled to file a formal legal claim for additional civil penalties pursuant to this
14 Section and shall be entitled to all reasonable attorney fees and costs relating to such claim if Davia
15 prevails. If Whitmor prevails in opposing such claim, Whitmor shall be entitled to all reasonable
16 attorney fees and costs in opposing the claim.

17 **4.3 Reimbursement of Plaintiff's Fees and Costs**

18 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
19 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
20 issue to be resolved after the material terms of the agreement had been settled. Whitmor then
21 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
22 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to
23 Davia and her counsel under general contract principles and the private attorney general doctrine
24 codified at California Code of Civil Procedure section 1021.5, for all work performed in this matter,
25 except fees that may be incurred on appeal. Under these legal principles, Whitmor shall pay the
26 amount of \$40,000 for fees and costs incurred investigating, litigating and enforcing this matter,
27 including the fees and costs incurred (and yet to be incurred) negotiating, drafting, and obtaining
28 the Court's approval of this Agreement in the public interest.

1 **4.4 Payment Procedures**

2 Whitmor shall deliver all settlement payment funds required by this Agreement to its
3 counsel within one (1) week of the Effective Date. Whitmor’s counsel shall confirm receipt of
4 settlement funds in writing to plaintiff’s counsel and, thereafter, hold Whitmor’s settlement checks
5 or the amounts paid by Whitmor until such time as the Court approves this settlement
6 contemplated by Section 7.

7 Within two (2) business days of the date plaintiff provides electronic mail notice to counsel
8 for Whitmor that the Court has approved this settlement, Whitmor’s counsel shall deliver the
9 settlement payments to plaintiff’s counsel as follows:

- 10 1. A civil penalty check in the amount of \$7,500 payable to “OEHHA” (EIN: 68-
11 0284486, Memo line “Prop. 65 Penalties, 2017-00559”);
12 2. A civil penalty check in the amount of \$2,500 payable to “Susan Davia” (Tax ID to
13 be supplied, Memo line “Prop. 65 Penalties, 2017-00559”); and
14 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the
15 amount of \$40,000 payable to “Sheffer Law Firm” (EIN 55-08-58910, Memo line “2016-
16 01120”)

17 All penalty and fee/cost payments shall be delivered to the Sheffer Law Firm at the following
18 address:

19 Sheffer Law Firm
20 Attn: Proposition 65 Controller
21 81 Throckmorton Ave., Suite 202
22 Mill Valley, CA 94941

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

26 **5. CLAIMS COVERED AND RELEASE**

27 **5.1 Davia’s Release of Whitmor**

28 **5.1.1** This Agreement is a full, final, and binding resolution between Davia, on behalf of
herself and in the interest of the general public, and Whitmor, its parent company, subsidiaries and
each of its attorneys, successors and assigns (“Defendant Releasees”) and each entity to whom it

1 directly or indirectly distributes or sells the Covered Products, including, but not limited to, its
2 downstream distributors, wholesalers, customers, retailers, franchiser, cooperative members,
3 licensors and licensees (“Downstream Releasees”) of any violation of Proposition 65 that was
4 asserted against Defendant Releasees regarding the failure to warn about exposure to chemicals
5 listed under Proposition 65 from Covered Products distributed by Whitmor before June 30, 2017.

6 **5.1.2** Davia, on behalf of herself and in the interest of the general public, hereby waives,
7 and releases Defendant Releasees from all claims for violation of Proposition 65 based upon
8 exposures to the Listed Chemicals from Covered Products distributed by Whitmor prior to June 30,
9 2017.

10 **5.1.3** The Parties understand and agree that this Section 5.1 release does not extend
11 upstream to any entities that manufactured any Covered Product or any component parts thereof or
12 any distributors or suppliers who sold any Covered Products or any component parts thereof to
13 Whitmor.

14 **5.1.4** Upon court approval of the Agreement, the Parties waive their respective rights to a
15 hearing or trial on the allegations of the Complaint.

16 **5.2** Whitmor’s Release of Davia

17 **5.2.1** Whitmor waives any and all claims against Davia, her attorneys, and other
18 representatives for any and all actions taken or statements made (or those that could have been
19 taken or made) by Davia and her attorneys and other representatives, whether in the course of
20 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
21 and/or with respect to the Covered Products.

22 **5.2.2** The Parties also provide each other with a general release herein which shall be
23 effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
24 obligations, costs, expenses, attorneys’ fees, damages, losses, claims, liabilities and demands of any
25 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject
26 matter of the Action and based upon exposures to the Listed Chemicals from Covered Products
27 distributed by Whitmor prior to June 30, 2017. The Parties acknowledge that each is familiar with
28 Section 1542 of the California Civil Code, which provides as follows:

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

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

13 **6. SEVERABILITY**

14 If, subsequent to court approval of this Agreement, any of the provisions of this Agreement
15 are determined by a court to be unenforceable, so long as all parties agree, the validity of the
16 enforceable provisions remaining shall not be adversely affected, unless the Court finds that any
17 unenforceable provision is not severable from the remainder of the Agreement.

18 **7. COURT APPROVAL**

19 This Agreement is effective upon execution but must also be approved by the Court. If this
20 Agreement is not approved by the Court in its entirety, the Parties shall meet and confer to
21 determine whether to modify the terms of the Agreement and to resubmit it for approval. In
22 meeting and conferring, the Parties agree to undertake any actions reasonably necessary to amend
23 and/or modify this Agreement in order to further the mutual intention of the Parties in entering
24 into this Agreement.

25 The Agreement shall become null and void if, for any reason, it is not approved and entered
26 by the Court, as it is executed, within one year after it has been fully executed by all Parties. In the
27 event that the Court does not approve the Agreement, the Agreement is null and void as of the date
28 of the Court order.

8. GOVERNING LAW

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

1 **9. NOTICES**

2 When any Party is entitled to receive any notice under this Agreement, the notice shall be
3 sent by tracked mail and electronic mail (if applicable) to the following:

4 For Whitmor, to:

5 Peter Felsenthal, CEO
6 Whitmor, Inc.
7 8680 Swinnea Road, Suite 103
8 Southaven MS 38671

9 With a copy to their counsel:

10 Megan P. Caldwell
11 Husch Blackwell LLP
12 1700 Lincoln Street, Suite 4700
13 Denver, CO 80203-4547
14 Megan.Caldwell@huschblackwell.com

15 For Davia to:

16 Proposition 65 Coordinator
17 Sheffer Law Firm
18 81 Throckmorton Ave., Suite 202
19 Mill Valley, CA 94941

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

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

23 Davia agrees to comply with the reporting form requirements referenced, in California
24 Health & Safety Code §25249.7(f) and to file a motion for approval of this Agreement.

25 **11. MODIFICATION**

26 This Agreement may be modified only: (1) by written agreement of the Parties; or (2) upon a
27 successful motion of any party and approval of a modified Agreement by the Court.

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

 The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion
is required to obtain judicial approval of this Agreement. In furtherance of obtaining such approval,
Davia and each Whitmor, and their respective counsel, agree to mutually employ their best efforts
to support the entry of this Agreement as a settlement agreement and obtain approval of the

1 Agreement - sufficient to render an order approving this agreement - by the Court in a timely
2 manner. Any affirmative effort by Whitmor to impede judicial approval of this Agreement shall
3 subject such impeding party to liability for attorney fees and costs incurred by plaintiff or her
4 counsel in their efforts to meet or oppose such Whitmor's impeding conduct. Whitmor agrees to
5 accept service of notice of entry of any order approving this Settlement or entering judgment by
6 electronic service to the electronic mail address of its counsel as identified in Section 9.

7 **13. ENTIRE AGREEMENT**

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

17 **14. ATTORNEY'S FEES**

18 **14.1** Should Davia or Whitmor prevail on any motion, application for order to show
19 cause or other proceeding to enforce a violation of this Agreement, such prevailing party shall be
20 entitled to their reasonable attorney fees and costs incurred as a result of such motion, order or
21 application, consistent with C.C.P. §1021.5.

22 **14.2** Except as specifically provided in the above paragraph and in Section 4.3, each Party
23 shall bear its own costs and attorney's fees in connection with this action.

24 **14.3** Nothing in this Section 14 shall preclude a Party from seeking an award of sanctions
25 pursuant to law.

26 **15. NEUTRAL CONSTRUCTION**

27 All Parties and their counsel have participated in the preparation of this Agreement and this
28 Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision

1 and modification by the Parties and has been accepted and approved as to its final form by all
2 Parties and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement
3 shall not be interpreted against any Party as a result of the manner of the preparation of this
4 Agreement. Each Party to this Agreement agrees that any statute or rule of construction providing
5 that ambiguities are to be resolved against the drafting Party should not be employed in the
6 interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code
7 Section 1654.

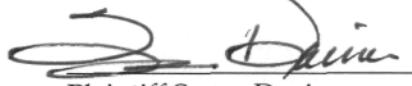
8 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

12 **17. AUTHORIZATION**

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

16 **IT IS SO AGREED**

<p>17 Dated: May __, 2017</p> <p>18</p> <p>19 _____</p> <p>20 Peter Felsenthal, CEO Whitmor, Inc.</p> <p>21</p>	<p>22 Dated: May <u>31</u>, 2017</p> <p>23</p> <p>24 </p> <p>25 Plaintiff Susan Davia</p> <p>26</p> <p>27</p> <p>28</p>
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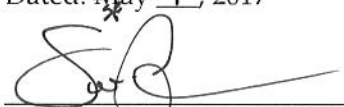
8 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

12 **17. AUTHORIZATION**

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

16 **IT IS SO AGREED**

<p>17 18 Dated: May ^{JUNE} 1, 2017 19  20 <u>Scott</u> Peter Felsenthal, CEO Whitmor, Inc. EVP SF</p>	<p>21 Dated: May __, 2017 22 23 24 25 26 27 28 Plaintiff Susan Davia</p>
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