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5 Attorneys for Plaintiff
SUSAN DAVIA

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

12 SUSAN DAVIA,
13

14 Plaintiff,

15 vs.

16 NEMCOR, INC., COSTCO WHOLESALE
17 CORPORATION and DOES 1-150,

18 Defendants.

Case No. CIV1704351

**SETTLEMENT AGREEMENT AND
STIPULATION TO JUDGMENT**

Case Filed: November 28, 2017

Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This Stipulation to Judgment Settlement Agreement (“Agreement”) is entered into by and
4 between Plaintiff Susan Davia, (“Davia” or “Plaintiff”) and Defendant Nemcor, Inc. (“Nemcor”),
5 with Nemcor referred to as “Defendant “or Settling Defendant” and Davia and Nemcor each
6 referred to as a “Party” and collectively referred to as the “Parties.”

7 **1.2 Plaintiff**

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 Defendant**

12 Nemcor employs 10 or more persons and is a person in the course of doing business for
13 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety
14 Code §§ 25249.6 *et seq.* (“Proposition 65”).

15 **1.4 General Allegations**

16 Davia alleges that Nemcor manufactured, distributed and/or sold, in the State of California,
17 certain bedding products packaged in vinyl storage/packaging cases comprised of or made with
18 components that exposed users to di(2-ethylhexyl)phthalate (DEHP) without first providing a “clear
19 and reasonable warning” as Proposition 65 defines that phrase. DEHP is listed as a carcinogen and
20 a reproductive and developmental toxin pursuant to Proposition 65. DEHP shall be referred to
21 hereinafter as “Listed Chemical.”

22 **1.5 Notice of Violation**

23 On October 11, 2016, Davia represents she served Nemcor and Costco Wholesale
24 Corporation with a valid and compliant Proposition 65 60-Day Notice of Violation, including a valid,
25 requisite Certificate of Merit, that provided public enforcers and these entities with notice of alleged
26 violations of Health & Safety Code § 25249.6 for failing to warn consumers of exposure to DEHP
27 from the vinyl bedding storage and packaging products sold in California (the “Notice”).
28

1 Nemcor received the Notice. The Parties represent that, as of the date they execute this
2 Agreement, they believe that no public enforcer is diligently prosecuting a Proposition 65
3 enforcement action related to the Listed Chemical in the products identified in the Notice.

4 **1.6 Complaint**

5 On November 28, 2017, Davia, acting in the California public interest, filed a Complaint in
6 the Superior Court of the State of California for the County of Marin, Case No. CIV1704351, alleging
7 violations by Nemcor and Does 1-150 of Health & Safety Code § 25249.6 based, *inter alia*, on the
8 alleged consumer exposures to DEHP in the Covered Packaging (defined below) (the “Action”).

9 **1.7 No Admission**

10 This Agreement resolves claims that are denied and disputed by the Parties. The Parties
11 enter into this Agreement pursuant to a full and final settlement of any and all claims between the
12 Parties for the purpose of avoiding prolonged litigation. Nemcor denies the material factual and
13 legal allegations contained in the Notice and Action, 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 Product and otherwise contends that all products, including the
16 Covered Packaging, it has manufactured, and/or distributed and/or sold in California have been
17 and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an
18 admission against interest by any Party of any fact, finding, issue of law, or violation of law.
19 Compliance with this Agreement shall not constitute or be construed as an admission against
20 interest by any Party of any fact, finding, conclusion, issue of law, or violation of law; nor shall
21 compliance with the Agreement constitute or be construed as an admission against interest by any
22 Party of any fact, finding, conclusion, issue of law, or violation of law. Notwithstanding the
23 foregoing, this section shall not diminish or otherwise affect the Parties’ obligations, responsibilities,
24 and duties under this Agreement.

25 **1.8 Consent to Jurisdiction**

26 For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction
27 over Nemcor as to the allegations contained in the Complaint, that venue is proper in County of
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1 Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Agreement. As
2 an express part of this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was filed
3 shall retain jurisdiction over the parties to enforce the Agreement.

4 **2. DEFINITIONS**

5 **2.1** The term “Complaint” shall mean the November 28, 2017, Complaint entitled *Davia*
6 *v Nemcor et al.*, Marin County Superior Court Case No. CIV1704351.

7 **2.2** The Term “Covered Product” shall mean any bedding product, including but not
8 limited to sheet sets or similar bedding products, distributed by Nemcor to a California Customer,
9 including Costco Wholesale Corporation. Such Covered Products include, but are not limited to,
10 Life Comfort Velvet Touch Sheet Sets, all sizes (including #983551, #77826, and #7146877)

11 **2.3** The term “Covered Packaging” means any storage or packaging case made in whole
12 or in part with vinyl or PVC and used to package the Covered Product or offered for sale in
13 conjunction with any Covered Product sold or offered for sale to consumers in California

14 **2.4** The term “Phthalate Free” Covered Packaging shall mean that each component of
15 any Covered Packaging contains less than or equal to 1,000 parts per million (“ppm”) each of DEHP,
16 DBP, DINP, DIDP, DnHP and BBP as determined by a minimum of duplicate quality controlled test
17 results using Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C,
18 or equivalent methodologies used by state or federal agencies for purposes of determining DEHP or
19 other listed phthalate content in a solid substance.

20 **2.5** “California Customer” shall mean any customer that is located in California, has a
21 California ship to address or that Nemcor reasonably understands maintains a retail store in
22 California or sells to customers located in California. For purposes of this Agreement, Costco
23 Wholesale Corporation shall be considered a California Customer.

24 **2.6** The term “Effective Date” shall mean December 1, 2017

25 **3. NON-MONETARY RELIEF**

26 **3.1 Formulation Commitment**

1 **3.1.1** Nemcor represents as a material term of this Agreement that all Covered Products in
2 Covered Packaging currently sold to California Customers are Phthalate Free. Notwithstanding this
3 representation, as of the Effective Date, Nemcor shall not manufacture or cause to be manufactured,
4 any Covered Packaging as a part of any Covered Product for sale or distribution to California
5 Customers unless such Covered Packaging is Phthalate Free.

6 **3.1.2** At any time after the Effective Date that Nemcor contracts with an existing or new
7 vendor of Covered Packaging for Covered Product intended for distribution to any California
8 Customer, Nemcor shall provide such vendor with the Phthalate Free concentration standards of
9 Section 2.4 and instruct such vendors not to incorporate any raw or component materials into
10 Covered Packaging that do not meet the Phthalate Free concentration standards of Section 2.4.

11 **3.1.3** Nemcor shall maintain copies of all testing of Covered Packaging it obtains in its
12 compliance with this Section 3, shall maintain copies of material vendor correspondence relating to
13 the Phthalate Free standards and shall produce such copies to Davia within fifteen (15) days of
14 receipt of reasonable written request from Davia based on a good faith belief of non-compliance.
15 Nemcor shall retain the Section 3.1.2 records for no less than three (3) years.

16 **3.2** Previously Obtained or Distributed Covered Packaging.

17 Nemcor represents as a material term of this Agreement that, to its knowledge, all Covered
18 Products in Covered Packaging that are not Phthalate Free have been removed from the California
19 market and returned to Nemcor. In such case as Nemcor discovers that any California Customer
20 maintains inventory of Covered Products with Covered Packaging that is not Phthalate Free,
21 Nemcor shall send a letter, electronic or otherwise (“Notification Letter”) to its primary customer
22 contact at such customer. The Notification Letter shall advise the recipient that Covered Packaging
23 for Covered Products contains DEHP, a phthalate chemical known to the State of California to cause
24 cancer and birth defects or other reproductive harm. The Notification letter shall direct the recipient
25 to either (a) return all existing inventory of Covered Product from California stores to a designated
26 Nemcor representative or (b) label all Covered Product with a clear and reasonable Proposition 65
27 warning before such product is sold in the California stores or to a California consumer. The
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1 Notification Letter shall include a minimum of one sheet of white background, adhesive, Proposition
2 65 Warning stickers with the following warning in no less than Book Antiqua, point 9 font (or its
3 equivalent):

4
5 **WARNING:** The vinyl/PVC packaging for this product contains
6 phthalate chemicals known to the State of California
7 to cause cancer and birth defects or other
8 reproductive harm. Please do not-reuse packaging
9 and discard it immediately after product removal.

10 The Notification Letter shall request written confirmation from the recipient, within fifteen (15) days
11 of mailing, as to the number of Covered Product in the recipient's inventory and confirmation of
12 whether the inventory will be returned to the designated Nemcor agent or labelled by the recipient
13 before sale in California. Nemcor shall maintain records of correspondence confirming compliance
14 with this section for three (3) years from the Effective Date and shall produce copies of such records
15 upon written reasonable request by Davia based on a good faith belief of non-compliance, subject to
16 the same terms in Section 3.1.2 governing when Davia may request information.

17 **3.3** Nemcor Warning Obligations

18 Nemcor has represented that all Covered Products in Covered Packaging currently sold to
19 California Customers are Phthalate Free. Notwithstanding this representation, if Nemcor discovers
20 any Covered Product in its inventory that was manufactured prior to the Effective Date and is not
21 Phthalate Free, then it shall not sell or ship any such Covered Product with non-Phthalate Free
22 Covered Packaging to a California Customer, unless such Covered Packaging is labelled with one
23 of the following warnings:

24 **WARNING:** The vinyl/PVC packaging for this product contains
25 phthalate chemicals known to the State of California
26 to cause cancer and birth defects or other
27 reproductive harm. Please do not-reuse packaging
28 and discard it immediately after product removal.

or

WARNING: This product contains a chemical known to the State
of California to cause cancer and birth defects or

1 other reproductive harm.

2 or

3 **WARNING:** This product can expose you to Di(2-
4 ethylhexyl)phthalate (DEHP), which is known to the
5 State of California to cause cancer and birth defects
6 or other reproductive harm. For more information
7 go to www.P65Warnings.ca.gov.

8 Each warning shall be prominently placed on Covered Packaging with such conspicuousness as
9 compared with other words, statements, designs, or devices as to render it likely to be read and
10 understood by an ordinary individual under customary conditions *before* Covered Product use.

11 **4. MONETARY PAYMENTS**

12 **4.1 Civil Penalty Payment Pursuant to Health & Safety Code § 25249.7(b)**

13 As a condition of settlement of all the claims referred to in this Agreement, Nemcor, Inc. shall
14 pay a total of \$6,500 in civil penalties in accordance with California Health & Safety Code §
15 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health
16 Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Davia.

17 **4.2 Augmentation of Penalty Payments**

18 For purposes of the penalty assessment under this Agreement, Plaintiff is relying entirely
19 upon Defendant for accurate, good faith reporting to Plaintiff of the nature and amounts of relevant
20 sales activity and retailer compliance with the warning obligations of this Agreement. If within nine
21 (9) months of the Effective Date, Plaintiff discovers and presents to Defendant either (1) evidence that
22 any type of Covered Product has been distributed by Nemcor in sales volumes materially different
23 (more than 15%) than those identified by Nemcor prior to execution of this Agreement or (2) that
24 after completion of the actions set forth in Section 3.2, Costco Wholesale Corporation is selling the
25 Covered Product in California without a warning pursuant to this Agreement, then Nemcor shall be
26 liable for an additional penalty amount of up to \$100 for each unit of Covered Product sold in
27 California prior to execution of this Agreement but not identified by Nemcor to Plaintiff or for each
28 unit of Covered Product sold by Costco Wholesale Corporation in California without a warning after
more than five (5) units are found without the requisite warning. Nemcor shall also be liable for any

1 reasonable, additional attorney fees expended by Plaintiff in discovering applicable California sales
2 without warning. Plaintiff agrees to provide Nemcor with a written demand for all such additional
3 penalties and attorney fees under this Section. After service of such demand, the Parties shall meet
4 and confer in good faith to assess the information. If within twenty (20) days Nemcor agrees Plaintiff
5 has documented a violation of this Section, the Parties shall have and additional ten (10) days to agree
6 to the amount of fees and penalties owing. Thereafter, Nemcor shall have five (5) days to submit
7 such payment to Plaintiff in accordance with the method of payment of penalties and fees identified
8 in Section 4.4. These deadlines may be extended upon mutual agreement of the Parties. Should the
9 Parties fail to agree on whether a violation exists or the amount of penalties or fees, Plaintiff shall be
10 entitled to enforce this Agreement and resulting Consent Judgment, seeking such relief as is
11 authorized by law, and shall be entitled to reasonable attorney fees and costs as set forth in Section
12 14.

13 **4.3 Reimbursement of Plaintiff's Fees and Costs**

14 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
15 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
16 issue to be resolved after the material terms of the agreement had been settled. Nemcor then
17 expressed a desire to resolve the fee and cost issue shortly after the other settlement terms had been
18 finalized. The Parties then attempted to (and did) reach an accord on the compensation due to Davia
19 and her counsel under general contract principles and the private attorney general doctrine codified
20 at California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees
21 that may be incurred on appeal. Under these legal principles, Nemcor shall pay the amount of \$32,000
22 for fees and costs incurred investigating, litigating and enforcing this matter, including the fees and
23 costs incurred (and yet to be incurred) negotiating, drafting, and obtaining the Court's approval of
24 this Agreement in the public interest.

25 **4.4 Payment Timing and Delivery Instructions, Payments Held In Trust**

26 Nemcor shall deliver all settlement checks required by this Agreement and resulting Consent
27 Judgment to its counsel within fourteen (14) days of execution of this Agreement. Nemcor's counsel
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1 shall confirm receipt of settlement checks in writing to plaintiff's counsel. Within five business days
2 of the date this Agreement is approved by the Court, counsel for Nemcor shall deliver the settlement
3 checks it has held pursuant to this Section to Plaintiff's counsel as follows:

4 1. a civil penalty check in the amount of \$4,875 payable to "OEHHA" (EIN: 68-
5 0284486, Memo line "Prop 65 Penalties, 2016-01168");

6 2. a civil penalty check in the amount of \$ 1,625 payable to "Susan Davia" (EIN:
7 to be supplied upon request by Nemcor), Memo line "Prop 65 Penalties, 2016-01168"); and

8 3. An attorney fee and cost reimbursement check, pursuant to Section 4.3, in the
9 amount of \$32,000 payable to "Sheffer Law Firm" (EIN 55-08-58910, Memo line "2016-01168").

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

12 Sheffer Law Firm
13 Attn: Proposition 65 Controller
14 81 Throckmorton Ave., Suite 202
15 Mill Valley, CA 94941.

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

19 **5. CLAIMS COVERED AND RELEASE**

20 **5.1 Davia's Releases of Settling Defendant**

21 **5.2** This Agreement is a full, final, and binding resolution between Davia, on behalf of
22 herself, her past and current agents, representatives, attorneys, successors, and/or assignees, and in
23 the interest of the general public, and Settling Defendant and each of its attorneys, predecessors,
24 successors, affiliates, parents, subsidiaries, licensors, and assigns, and all of its downstream
25 distributors, customers, retailers, wholesalers, sellers, including Costco Wholesale Corporation and
26 any affiliate thereof, ("Defendant Releasees"), of any violation of Proposition 65 that has been or
27 could have been asserted against Defendant Releasees regarding the failure to warn about exposure
28 to the Listed Chemical arising in connection with any Covered Product or Covered Packaging

1 manufactured, supplied, distributed, or sold by Defendant Releasees prior to the Effective Date,
2 regardless of when such Covered Product in Covered Packaging is sold to a California consumer.

3 Settling Defendant's compliance with this Agreement shall constitute compliance with
4 Proposition 65 with respect to the Listed Chemical in the Covered Packaging for Covered Products
5 on and after the Effective Date. As to Davia only, Settling Defendant's compliance with this
6 Agreement shall constitute compliance with Proposition 65 with respect to DBP, DIDP, DnHP and
7 BBP in the Covered Packaging, if any, for Covered Products distributed by Settling Defendant on
8 and after the Effective Date.

9 **5.2.1** Davia, on behalf of herself, her past and current agents, representatives, attorneys,
10 successors, and/or assignees, and in the interest of the general public, hereby waives, with respect
11 to Covered Products in Covered Packaging, all rights to institute or participate in, directly or
12 indirectly, any form of legal action and releases all claims, including, without limitation, all actions,
13 and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines,
14 penalties, losses, or expenses (including, but not limited to, investigation fees, expert fees, and
15 attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent
16 (collectively "Claims"), against Defendant Releasees that arise under Proposition 65 that could have
17 been asserted in the public interest, as such Claims relate to Defendant Releasees' alleged failure to
18 warn about exposures to the Listed Chemical contained in any Covered Products in Covered
19 Packaging sold to California consumers before the Effective Date, or as to Davia's Claims only, to
20 DBP, DIDP, DNHP and BBP, contained in any Covered Packaging for Covered Products.

21 **5.2.2** The Parties further understand and agree that this Section 5.1 release shall not extend
22 upstream to any entities that manufactured any Covered Packaging or any component parts thereof,
23 or any distributors or suppliers who sold any Covered Packaging or any component parts thereof to
24 Defendants.

25 Upon court approval of the Agreement, the Parties waive their respective rights to a hearing
26 or trial on the allegations of the Complaint.

27 **5.3.** Defendant's Release of Davia
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1 Nemcor waives any and all claims against Davia, her attorneys, and other representatives for
2 any and all actions taken or statements made (or those that could have been taken or made) by Davia
3 and her attorneys and other representatives, whether in the course of investigating claims or
4 otherwise seeking enforcement of Proposition 65 against it in this matter, and/or with respect to the
5 Covered Packaging up through the Effective Date.

6 **5.4 General Release**

7 Each Party also provides, for the benefit of the other Party, a general release herein which
8 shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action,
9 obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands of any
10 Party of any nature, character or kind, known or unknown, suspected or unsuspected, arising out of
11 the subject matter of the Action up through the Effective Date, except as otherwise expressly
12 identified herein. Each Party Defendant acknowledges that it is familiar with Section 1542 of the
13 California Civil Code, which provides as follows:

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

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

26 **6. SEVERABILITY**

27 If, subsequent to the Effective Date any provision of this Agreement is determined by a court
28 to be unenforceable, the validity of the enforceable provisions remaining, upon agreement of the
Parties, shall not be adversely affected, unless the Court finds that any unenforceable provision is

1 not severable from the remainder of the Agreement

2 7. COURT APPROVAL

3 This Agreement is effective upon execution but must also be approved by the Court. If the
4 Court does not approve this Agreement in its entirety, the Parties shall meet and confer to determine
5 whether to modify the terms of the Agreement and to resubmit it for approval. In meeting and
6 conferring, the Parties agree to undertake any actions reasonably necessary to amend and/or modify
7 this Agreement in order to further the mutual intention of the Parties in entering into this
8 Agreement. The Agreement shall become null and void if, for any reason, it is not approved and
9 entered by the Court, as it is executed, within one year after it has been fully executed by all Parties.
10 Upon approval, Nemcor agrees to accept notice of entry of the order of approval and judgment by
11 electronic mail service to its counsel of record.

12 8. GOVERNING LAW

13 The terms of this Agreement shall be governed by the laws of the State of California. This
14 Agreement applies only to Covered Packaging sold in California and shall have no effect on, and
15 does not govern, any Covered Products in Covered Packaging that is not manufactured and
16 distributed for sale in California or sold in California.

17 9. NOTICES

18 When any Party is entitled to receive any notice under this Agreement, the notice shall be
19 sent by certified mail or other delivery method with a delivery confirmation/tracking system and
20 electronic mail to the following:

21 For Nemcor, Inc.:

22 Timothy McIntyre, President
23 Nemcor, Inc.
24 501 Franklin Blvd.
25 Cambridge ON
Canada N1R 8G9

26 With copy to their counsel at:

27 Renee D. Wasserman, Esq.
28

1 Alecia E. Cotton, Esq.
2 Rogers Joseph O'Donnell
3 311 California Street, 10th fl.
4 San Francisco, CA 94104

5 For Davia to:

6 Proposition 65 Coordinator
7 Sheffer Law Firm
8 81 Throckmorton Ave., Suite 202
9 Mill Valley, CA 94941.

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

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

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

15 **11. MODIFICATION**

16 This Agreement may be modified only by (1) a written agreement of the Parties and (2) upon
17 a successful motion of any party and approval of a modified Agreement by the Court. A copy of
18 any such motion to modify shall be served on the Office of the Attorney General.

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

20 Pursuant to Health & Safety Code § 25249.7 Davia is obligated to file a noticed motion to
21 obtain Court approval of this Agreement and Davia agrees to do so. Nemcor shall not oppose entry
22 of this Agreement and shall support the Court approval of this Agreement in a timely manner.

23 **13. ENTIRE AGREEMENT**

24 This Settlement contains the sole and entire agreement and understanding of the Parties with
25 respect to the entire subject matter hereof, and any and all prior discussions, negotiations,
26 commitments, and understandings related hereto. No representations, oral or otherwise, express or
27 implied, other than those contained herein have been made by any Party hereto. No other
28 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

1 shall be binding unless executed in writing by the Party to be bound. No waiver of any of the
2 provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other
3 provisions whether or not similar, nor shall such waiver constitute a continuing waiver

4 **14. ATTORNEY'S FEES**

5 14.1 Should Davia prevail on any motion, application for order to show cause or other
6 proceeding to enforce a violation of this Agreement, Davia shall be entitled to her reasonable
7 attorney fees and costs incurred as a result of such motion, order or application, if allowed under
8 C.C.P. § 1021.5. Should Settling Defendant prevail on any motion, application for order to show
9 cause or other proceeding to enforce a violation of this Agreement and resulting Consent Judgment,
10 Settling Defendant may be entitled to its reasonable attorney fees and costs incurred as a result of
11 such motion, order or application upon a finding that Davia's prosecution of the motion or
12 application lacked substantial justification. For purposes of this Agreement, the term substantial
13 justification shall carry the same meaning as used in the Civil Discovery Act of 1986, Code of Civil
14 Procedure §§ 2016, et seq.

15 14.2 Except as specifically provided in the above paragraph and in Section 4.3, each Party
16 shall bear its own costs and attorney's fees in connection with this action.

17 14.3 Nothing in this Section 14 shall preclude a Party from seeking an award of sanctions
18 pursuant to law.

19 **15. NEUTRAL CONSTRUCTION**

20 All Parties and their counsel have participated in the preparation of this Agreement and this
21 Agreement is the result of the joint efforts of the Parties. This Agreement was subject to revision and
22 modification by the Parties and has been accepted and approved as to its final form by all Parties
23 and their counsel. Accordingly, any uncertainty or ambiguity existing in this Agreement shall not
24 be interpreted against any Party as a result of the manner of the preparation of this Agreement. Each
25 Party to this Agreement agrees that any statute or rule of construction providing that ambiguities
26 are to be resolved against the drafting Party should not be employed in the interpretation of this
27 Agreement and, in this regard, the Parties hereby waive California Civil Code Section 1654.
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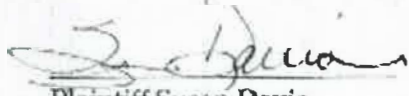
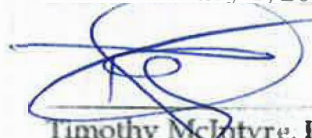
16. COUNTERPARTS, FACSIMILE SIGNATURES

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

17. AUTHORIZATION

The undersigned parties 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: December <u>28</u>, 2017</p>  <p>Plaintiff Susan Davia</p>	<p>Dated: January 2, 2018</p>  <p>Timothy McIntyre, President Nemcor, Inc.</p>
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