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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.

28 ///

1           **1.7**     No Admission

2           This Agreement resolves claims that are denied and disputed by Whitmor. The Parties enter  
3 into this Agreement pursuant to a full and final settlement of any and all claims between the Parties  
4 for the purpose of avoiding prolonged litigation. Whitmor denies the material factual and legal  
5 allegations contained in the Notice and Action, maintains that it did not knowingly or intentionally  
6 expose California consumers to the Listed Chemicals through the reasonably foreseeable use of the  
7 Covered Product and otherwise contends that all Noticed products it has manufactured, distributed  
8 and/or sold in California have been and are in compliance with all applicable laws. Nothing in this  
9 Agreement shall be construed as an admission by Whitmor of any fact, finding, issue of law, or  
10 violation of law, nor shall compliance with this Agreement constitute or be construed as an  
11 admission by Whitmor of any fact, finding, conclusion, issue of law, or violation of law, such being  
12 specifically denied by Whitmor. However, notwithstanding the foregoing, this section shall not  
13 diminish or otherwise affect Whitmor’s obligations, responsibilities, and duties under this  
14 Agreement.

15           **1.8**     Consent to Jurisdiction

16           For purposes of this Agreement only, the Parties stipulate that this Court has jurisdiction  
17 over Whitmor as to the allegations contained in the Complaint, that venue is proper in County of  
18 Marin, and that this Court has jurisdiction to enter and enforce the provisions of this Agreement.  
19 As an express part of this Agreement, pursuant to C.C.P. §664.6 the Court in which this action was  
20 filed shall retain jurisdiction over the parties to enforce the settlement until performance in full of  
21 the terms of the settlement.

22           **2.**       DEFINITIONS

23           **2.1**     The term “Complaint” shall mean the May 12, 2017, Complaint, Marin County  
24 Superior Court Case No. CIV 1701729.

25           **2.2**     The term “Effective Date” shall mean the date on which this Agreement is executed  
26 by the parties.

27           **2.3**     The term “Products” or “Covered Products” shall mean all Whitmor brand  
28 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](http://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

8             With a copy to their counsel:

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

12     For Davia to:

13            Proposition 65 Coordinator  
14            Sheffer Law Firm  
15            81 Throckmorton Ave., Suite 202  
16            Mill Valley, CA 94941

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

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

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

21     **11.       MODIFICATION**

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

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

25             The parties acknowledge that, pursuant to Health & Safety Code §25249.7, a noticed motion  
26 is required to obtain judicial approval of this Agreement. In furtherance of obtaining such approval,  
27 Davia and each Whitmor, and their respective counsel, agree to mutually employ their best efforts  
28 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.

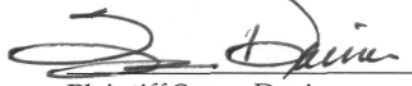
8 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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 21 Whitmor, Inc.</p>	<p>22 Dated: May <u>31</u>, 2017</p> <p>23 </p> <p>24 Plaintiff Susan Davia</p>
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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.

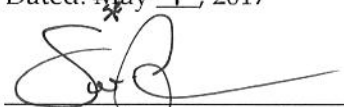
8 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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 18 Dated: <del>May</del> <sup>JUNE</sup> 1, 2017 19  20 <u>Scott</u> Peter Felsenthal, CEO Whitmor, Inc. EVP SF</p>	<p>Dated: May __, 2017  _____ Plaintiff Susan Davia</p>
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