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4 Attorneys for Plaintiff
5 SUSAN DAVIA

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

SUSAN DAVIA,
Plaintiff,
v.
MIDWEST TRADING GROUP, INC., CVS
HEALTH CORP., CVS PHARMACY, INC.
and DOES 1-150,
Defendants.

Case No. CIV2000230
**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**
Action Filed: January 17, 2020
Trial Date: None Assigned

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1. INTRODUCTION

1.1 The Parties

This settlement agreement (Agreement or Settlement Agreement) is entered into by and between Susan Davia (Davia), on the one hand, and Midwest Trading Group, Inc. and CVS Pharmacy, Inc. (Defendants), on the other hand, with Davia and Defendants collectively referred to as the Parties.

1.2 Davia

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

1.3 Midwest Trading Group, Inc.

Midwest Trading Group, Inc. (Midwest Trading) is a person in the course of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code §§ 25249.6 *et seq.* (Proposition 65).

1.4 CVS Pharmacy, Inc.

CVS Pharmacy, Inc. is a person in the course of doing business for purposes of Proposition 65.

1.5 CVS Health Corp.

CVS Health Corp. alleges it is a holding company which does not transact business in California and has no involvement with the products at issue in this case. Within ten (10) business days of Court approval of this settlement and entry by the Court of a consent judgement in favor of Susan Davia and against Midwest Trading and CVS Pharmacy, Inc., plaintiff shall file a dismissal with prejudice of her Complaint against CVS Health Corp.

1.6 General Allegations

Davia alleges that Defendants participated in the manufacture, distribution and/or sale, in the State of California, vinyl coated charging cables that exposed users to Diisononyl phthalate

1 (DINP) and/or Di(2-ethylhexyl)phthalate (DEHP) without first providing a clear and
2 reasonable warning under Proposition 65. DINP and DEHP are listed as a carcinogen and
3 reproductive toxin pursuant to Proposition 65. DINP and DEHP shall be referred to hereinafter
4 collectively as the Listed Chemical .

5 **1.7 Notices of Violation**

6 On March 27, 2019, Davia served Midwest Trading and various public enforcement
7 agencies with a document entitled 60-Day Notice of Violation that provided public enforcers
8 and the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for
9 purportedly failing to warn consumers of the presence of the Listed Chemical found in the
10 Covered Products (defined hereafter) sold in California (AG Notice 2019-00583).

11 On February 6, 2020, Davia served Midwest Trading, CVS Health Corp., CVS Pharmacy,
12 Inc. and various public enforcement agencies with a document entitled Supplemental 60-Day
13 Notice of Violation that provided public enforcers and the noticed entities with notice of alleged
14 violations of Health & Safety Code § 25249.6 for purportedly failing to warn consumers of the
15 presence of DINP and DEHP in the Covered Products (defined hereafter) sold in California (AG
16 Notice 2020-00273).

17 The March 27, 2019 60-Day Notice of Violation and the February 6, 2020 Supplemental 60-
18 Day Notice of Violation served on Midwest Trading, CVS Health Corp., and CVS Pharmacy, Inc.
19 shall be referred collectively to herein as the Notices.

20 Defendants received the Notices. Defendants represent that, as of the date they execute
21 this Agreement, they are not aware of any public enforcer that is diligently prosecuting a
22 Proposition 65 enforcement action related to the Listed Chemical in the Covered Products, as
23 identified in the Notices.

24 **1.8 Complaint**

25 On January 17, 2020, Davia filed a Complaint in the Superior Court of the State of
26 California for the County of Marin, Case No. CIV2000230, alleging violations by Midwest Trading
27 Group, Inc. of Health and Safety Code § 25249.6 based on the alleged exposures to the Listed
28

1 Chemical in the Covered Products. On June 24, 2020, Davia filed a First Amended Complaint to
2 add retailer defendants CVS Health Corp. and CVS Pharmacy, Inc. (the Action).

3 **1.9 No Admission**

4 This Agreement resolves claims that are denied and disputed by Midwest Trading, CVS
5 Health Corp. and CVS Pharmacy, Inc. The Parties enter into this Agreement pursuant to a full,
6 final and binding settlement of any and all claims between the Parties for the purpose of avoiding
7 prolonged litigation. Defendants deny the material factual and legal allegations contained in the
8 Notices, maintain that they did not knowingly or intentionally expose California consumers to the
9 Listed Chemical through the reasonably foreseeable use of the Covered Products (defined
10 hereafter) and further contend that all Covered Products they have manufactured, distributed
11 and/or sold in California have been and are in compliance with all applicable laws. Nothing in
12 this Agreement shall be construed as an admission by Midwest Trading, CVS Health Corp. and/or
13 CVS Pharmacy, Inc. of any fact, finding, issue of law, or violation of law, nor shall compliance
14 with this Agreement constitute or be construed as an admission by Midwest Trading, CVS Health
15 Corp. and/or CVS Pharmacy, Inc. of any fact, finding, conclusion, issue of law, or violation of law,
16 all of which are specifically denied by Midwest Trading, CVS Health Corp. and CVS Pharmacy,
17 Inc. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect
18 Midwest Trading, CVS Health Corp. and CVS Pharmacy, Inc.'s obligations, responsibilities, and
19 duties under this Agreement.

20 **1.10 Consent to Jurisdiction**

21 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
22 Court has jurisdiction over Defendants as to the allegations in the Notices received from Davia,
23 and this Agreement, that venue is proper in County of Marin, and that the Marin County Superior
24 Court has jurisdiction over the Parties in any action to enforce the provisions of this Agreement.

25 **2. DEFINITIONS**

26 **2.1** The term Product or Covered Product shall mean all PowerXcel brand
27 electronics sync and charge cables made with vinyl components.
28

1 **2.2** The term Phthalate Free Covered Product shall mean that each vinyl component of
2 each Covered Product contains less than or equal to 1,000 parts per million (ppm) of di(2-
3 ethylhexyl) phthalate (DINP), dibutyl phthalate (DBP), diisononyl phthalate (DINP),
4 diisodecyl phthalate (DIDP), di-n-hexyl phthalate (DnHP) and butyl benzyl phthalate (BBP)
5 as determined test results using Environmental Protection Agency (EPA) testing methodologies
6 3580A and 8270C.

7 **2.3** The term California Customer shall mean any customer located in California, any
8 customer with a California ship to address, any customer that Midwest Trading reasonably
9 understand operates a retail store in California and any ecommerce customer that Midwest
10 Trading reasonably understand sells to consumers in California.

11 **2.4** Effective Date shall mean May 1, 2021

12 **3. INJUNCTIVE-TYPE RELIEF**

13 **3.1 Product Reformulation Commitment**

14 **3.1.1** No later than the Effective Date, Midwest Trading shall provide the Phthalate Free
15 phthalate concentration standards of Section 2.2 to any then-current vendor of any Covered
16 Product, if any, and instruct such entity not to provide any Covered Product that does not meet
17 the Phthalate Free concentration standards of Section 2.2. Midwest Trading shall maintain copies
18 of all vendor correspondence relating to the Phthalate Free concentration standards for two (2)
19 years after the Effective Date and shall produce such copies to Davia within fifteen (15) days of
20 receipt of reasonable request made in writing from Davia.


21 **3.1.2** After the Effective Date, Midwest Trading shall provide the Phthalate Free phthalate
22 concentration standards of Section 2.2 to any New Vendor of any Covered Product and instruct
23 such entity not to provide any Covered Product that does not meet the Phthalate Free
24 concentration standards of Section 2.2. New Vendor means any vendor of Covered Products
25 from whom Midwest Trading was not obtaining Covered Products as of the Effective Date. Prior
26 to purchase and acquisition of any Covered Product from any New Vendor, Midwest Trading
27 shall obtain written confirmation and laboratory test result from the New Vendor demonstrating
28 compliance with the Phthalate Free phthalate concentration standard for any Covered Product.

1 For two (2) years after the Effective Date, for every Covered Product Midwest Trading
2 manufactures, causes to be manufactured, orders, causes to be ordered or otherwise obtains from a
3 New Vendor, Midwest Trading shall maintain copies of all testing of such products demonstrating
4 compliance with this section, shall maintain copies of all vendor correspondence relating to the
5 Phthalate Free concentration standards and shall produce such copies to Davia within fifteen (15)
6 days of receipt of reasonable request made in writing from Davia.

7 **3.1.3** As of June 1, 2021, Midwest Trading shall not distribute any Covered Product to a
8 California Customer that is not Phthalate Free. For every Covered Product Midwest Trading
9 distributes to a California Customer after the Effective Date, Midwest Trading shall, for a period of
10 two (2) years after placing the order, maintain copies of all testing of such products demonstrating
11 compliance with this section, shall maintain copies of all vendor correspondence relating to the
12 Phthalate Free concentration standards of Section 2.2 and shall produce such copies to Davia
13 within fifteen (15) days of receipt of reasonable request made in writing from Davia.


14 **3.2 Previously Distributed Covered Products.**

15 **3.2.1** Customer Notification - No later than the Effective Date, Midwest Trading shall send
16 a letter, electronic or otherwise (Notification Letter) to: (1) each retailer or distributor in
17 California to which it, after March 27, 2018, supplied any Covered Product, and (2) any other
18 retailer or distributor in California that Midwest Trading reasonably understands or believes has
19 any inventory of Covered Products. The Notification Letter shall advise the recipient that Covered
20 Products contain DINP, a chemical known to the State of California to cause cancer, birth defect
21 or other reproductive harm . The Notification letter shall inform the recipient that Proposition 65
22 warning message on the Covered Product packaging is inadequate and request that the recipient
23 apply a new warning label over the existing language, which label shall contain one of the
24 following warnings, before it is sold in the California market or to a California customer:

25
26  **WARNING:** This product can expose
27 you to chemicals, including diisononyl
28 phthalate, which is known to the State of
California to cause cancer. For more

1 information go to
2 www.P65Warnings.ca.gov;

3 or

4  **WARNING:** This product can expose
5 you to diisononyl phthalate, which is known
6 to the State of California to cause cancer. For
7 more information go to
8 www.P65Warnings.ca.gov;

9 or

10  **WARNING:** Cancer and Reproductive
11 Harm - www.P65Warnings.ca.gov

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

16 **3.2.2** Midwest Trading shall maintain records of compliance correspondence, inventory
17 reports or other communication confirming compliance with § 3.2.1 for two (2) years from the
18 Effective Date and shall produce copies of such records upon reasonable written request by Davia.

19 **3.3 Existing Inventory Product Labels**


20 **3.3.1 Midwest Trading Inventory**

21 For any Covered Products obtained by Midwest Trading before January 1, 2021, and
22 remaining in its inventory, Midwest Trading shall not sell or ship any of such Covered Product
23 into California, to a California customer, or to any entity that Midwest Trading has reason to know
24 will sell the Covered Product into California or to a California customer unless Defendant either
25 has confirmation that such product meets the Phthalate Free requirements of Section 2.2 or the
26 product packaging has been printed with one of the warning labels set forth in Section 3.3.2.


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3.3.2 Covered Product Label.

For all Covered Products remaining in Midwest Trading s inventory after January 1, 2021, that are not Phthalate Free and require a warning pursuant to Section 3.3, such products shall include a warning label on the Covered Product or its immediate packaging that states:

 **WARNING:** This product can expose you to chemicals, including diisononyl phthalate, which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov;

or

 **WARNING:** This product can expose you to diisononyl phthalate, which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov;

or

 **WARNING:** Cancer and Reproductive Harm - www.P65Warnings.ca.gov

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


3.3.3 Midwest Trading Internet Website Warning.

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


1 form for a Covered Product; (c) on the same page as the price for any Covered Product; or (d) on
2 one or more web pages displayed to a purchaser during the checkout process.

3 3.3.4 CVS Pharmacy, Inc. Inventory

4 For all Covered Products obtained by CVS Pharmacy, Inc. before January 1, 2021,
5 CVS Pharmacy, Inc. shall not sell such Covered Product unless it is confirmed in a writing to CVS
6 Pharmacy, Inc. by Midwest Trading to be Phthalate Free or the product or its immediate
7 packaging is already labeled with one of the following warning statements:

8  **WARNING:** This product can expose
9 you to chemicals, including diisononyl
10 phthalate, which is known to the State of
11 California to cause cancer. For more
information go to
www.P65Warnings.ca.gov;


12 or

13  **WARNING:** This product can expose
14 you to diisononyl phthalate, which is known
15 to the State of California to cause cancer. For
more information go to
16 www.P65Warnings.ca.gov;

17 or

18  **WARNING:** Cancer and Reproductive
Harm - www.P65Warnings.ca.gov;

19 or

20  **WARNING:** This product can expose
21 you to Di (2-ethylhexyl) phthalate, which is
22 known to the State of California to cause
cancer, and birth defects or other
23 reproductive harm. For more information
go to www.P65Warnings.ca.gov;

24 or

25 Prop 65 Warning: This Product, packaging
26 and components may contain chemicals
known in the State of California to cause
27 cancer, birth defects or other reproductive
harm.

28

1 **4. MIDWEST TRADING SHALL BE RESPONSIBLE FOR ENSURING COMPLIANCE**
2 **WITH SECTION 3.3.4 AND WILL BE LIABLE FOR ANY VIOLATION OF THIS SECTION.**
3 **MONETARY PAYMENTS**

4 **4.1 Civil Penalty**

5 As a condition of settlement of all the claims referred to in this Settlement
6 Agreement, Midwest Trading shall cause to be paid a total of \$3,200 in civil penalties in
7 accordance with California Health & Safety Code § 25249.12(c)(1) & (d).

8 **4.2 Augmentation of Penalty Payments**

9 For purposes of the penalty assessment under this Agreement, Davia is relying entirely
10 upon Defendants and their counsel for accurate, good faith reporting to Davia of the nature and
11 amounts of sales activity of the Covered Products during the relevant period. If within nine (9)
12 months of the Effective Date, Davia discovers and presents to Midwest Trading, CVS Health Corp.
13 and CVS Pharmacy, Inc. evidence that during the relevant period the Covered Products have been
14 sold to California consumers by Defendants in sales volumes materially different (more than 25%)
15 than those identified by Defendants prior to execution of this Agreement, then Midwest Trading
16 shall be liable for an additional penalty amount of \$10,000.00. Midwest Trading shall also pay
17 reasonable, additional attorney fees expended by Davia in discovering such additional sales and
18 reporting them to Defendants in accordance with this section. Davia agrees to provide Defendants
19 with a written demand for such additional penalties and attorney fees under this Section. After
20 service of such demand, Midwest Trading shall have thirty (30) days to pay the additional civil
21 penalties amount demanded or negotiate with Davia as to an agreed amount of fees and penalties
22 to be paid in accordance with the method of payment of penalties and fees identified in Section 4.4.
23 Should the parties dispute whether Davia has provided appropriate evidence of sales volumes
24 materially different (more than 25%) than those identified by Midwest Trading prior to execution
25 of this Agreement , then Davia and Midwest Trading shall have the issue decided by a mutually
26 agreed upon Mediator, each side to bear its own costs of the mediation. Should mediation not be
27 successful in resolving the matter then, within thirty (30) days of the mediation, Davia shall be
28 entitled to file an action for breach of this Agreement in which the sole issues for resolution by the

1 Court shall be: (1) whether during the relevant period Covered Products were sold to California
2 consumers by Defendants in sales volumes materially different (more than 25%) than those
3 identified by Defendants prior to execution of this Agreement; and (2) if the Court finds in favor of
4 Davia on issue no. 1, the amount of legal fees, if any, Davia is entitled to recover for discovering
5 the additional sales and reporting them to Defendants in accordance with this section. In any
6 action brought under this Section 4.2, the prevailing party shall be entitled to recover its attorney s
7 and other fees and costs.

8 **4.3 Reimbursement of Davia s Fees and Costs**

9 The Parties acknowledge that Davia and her counsel refused to consider any
10 reimbursement of plaintiff s fees or costs until all other terms of the settlement were reached. The
11 Parties then reached an accord on the reimbursement due to Davia and compensation of her
12 counsel under general contract principles and consistent with the private attorney general doctrine
13 codified at California Code of Civil Procedure section 1021.5, in the amount of \$55,000 for fees and
14 costs incurred investigating and negotiating a resolution of this matter. Such payment shall be
15 made payable to Sheffer Law Firm .

16 **4.4 Payment Procedures**

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

25 a civil penalty check payable to OEHHA (Memo line Prop 65 Penalties, 2018-02201), in
26 the amount of \$2,400;

27 a civil penalty check payable to Susan Davia (Memo line Prop 65 Penalties, 2018-02201)
28 in the amount of \$800; and

1 an attorney fee and cost reimbursement check payable to Sheffer Law Firm (Memo line
2 2018-02201) in the amount of \$55,000.

3 All Section 4.1 and Section 4.3 civil penalty and attorney fee/cost payments shall be
4 delivered to plaintiff s counsel at the following address:

5 Sheffer Law Firm
6 Attn: Proposition 65 Controller
7 232 E. Blithedale Avenue, Suite 210
8 Mill Valley, CA 94941

9 All Section 4.2 civil penalty and attorney fee/cost payments, if any, shall be delivered to
10 plaintiff s counsel at the following address on or before the date agreed upon pursuant to that
11 section or as ordered by the Court:

12 Sheffer Law Firm
13 Attn: Proposition 65 Controller
14 232 E. Blithedale Avenue, Suite 210
15 Mill Valley, CA 94941

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

19 **4.5 Issuance of 1099 Forms**

20 After this Agreement has been executed and funds have been transmitted to Davia s counsel
21 at the address set forth in Section 4.4., Midwest Trading shall cause three separate 1099 forms to be
22 issued, as follows:

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

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

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

1 **5. RELEASES**

2 **5.1 DAVIA S RELEASE OF MIDWEST TRADING, CVS HEALTH CORP. AND CVS**
3 **PHARMACY, INC.**

4 5.1.1 This settlement agreement is a full, final and binding resolution between
5 Davia, and Midwest Trading, CVS Health Corp. and CVS Pharmacy, Inc. (the Named
6 Defendants) of any violation of Proposition 65 that was or could have been asserted by Davia on
7 behalf of herself, her representatives or attorneys, against Named Defendants, their directors,
8 officers, employees, attorneys, parents and each entity to whom Named Defendants directly or
9 indirectly distributes or sells Covered Products, based on their alleged failure to warn about
10 alleged exposures to the Listed Chemical contained in the Covered Products that were sold by
11 Named Defendants into California before the Effective Date.

12 5.1.2 Davia also provides a general release and waiver which shall be effective as a full
13 and final accord and satisfaction, and as a bar to all claims, actions and causes of action, of any
14 nature, character or kind, known or unknown, suspected or unsuspected, arising out of the subject
15 matter of the Notice and the Covered Products to the extent sold or distributed by Named
16 Defendants prior to the Effective Date, and for all actions taken and statements made (or that
17 could have been taken or made) by Named Defendants and their attorneys and other
18 representatives in connection with negotiating this Agreement. Davia acknowledges that she is
19 familiar with section 1542 of the California Civil Code, which provides as follows:

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

26 Davia, in her individual capacity expressly waives and relinquishes any and all rights and
27 benefits that she may have under, or which may be conferred on her by the provisions of Section
28 1542 of the California Civil Code as well as under any other state or federal statute or common law
principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits

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

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

9 **5.2 DEFENDANTS RELEASE OF DAVIA**

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

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

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

1 discovery or existence of any such additional or different claims or facts arising out of the released
2 matters.

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

5 **6. COURT APPROVAL**

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

15 **7. SEVERABILITY**

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

19 **8. GOVERNING LAW**

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

21 **9. NOTICES**

22 When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by
23 FedEx (or other tracked delivery service) or electronic mail to the following:
24

25 **For Midwest Trading:**

26 Rashid Aziz
27 Midwest Trading Group, Inc.
28 1400 Centre Circle
Downers Grove, IL 60515

1 **For Midwest Trading s Counsel:**

2 Michael Sachs
3 Clark Hill LLP
4 505 Montgomery Street, 13th Floor
5 San Francisco, CA 94111
6 msachs@clarkhill.com

6 **For CVS Health Corp. and CVS Pharmacy, Inc.**

7 Michael Meo
8 Senior Legal Counsel
9 One CVS Drive
10 Woonsocket, RI 02895
11 Michael.Meo@CVSHealth.com

11 **For CVS Health Corp. and CVS Pharmacy, Inc. s Counsel:**

12 Michael Sachs
13 Clark Hill LLP
14 505 Montgomery Street, 13th Floor
15 San Francisco, CA 94111
16 msachs@clarkhill.com

16 **For Davia:**

17 Proposition 65 Coordinator
18 Sheffer Law Firm
19 232 E. Blithedale Avenue, Suite 210
20 Mill Valley, CA 94941

21 Any Party may modify the person and address to whom the notice is to be sent by sending each
22 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 of California Health & Safety
24 Code §25249.7(f).

25 **11. MODIFICATION**

26 This Agreement may be modified only by written agreement of the Parties or court order.
27
28

1 **12. ENTIRE AGREEMENT**

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

12 **13. ATTORNEY S FEES**

13 **13.1** In any dispute concerning any matter related to this Agreement, the prevailing Party
14 shall be entitled to recover its costs and expenses, including attorneys fees and costs. Except as
15 otherwise specifically provided herein, each Party shall bear its own costs and attorney s fees in
16 connection with the Notices. Nothing in this Section shall preclude a Party from seeking an award
17 of sanctions pursuant to law.

18 **14. NEUTRAL CONSTRUCTION**

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

1 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

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

8 **16. AUTHORIZATION**

9 Each of the persons signing this agreement represents and warrants that he or she is
10 authorized and has the capacity to execute this Agreement on behalf of the respective Party and
11 has read, understood, and agrees to all of the terms and conditions of this Agreement on behalf of
12 such Party.

13 **IT IS SO AGREED**

<p>15 Dated: April __, 2021</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 Rashid Aziz, Principal Midwest Trading Group, Inc.</p>	<p>Dated: April <u>20</u>, 2021</p> <p></p> <p>20 Susan Davia</p>
<p>21 Dated: April __, 2021</p> <p>22</p> <p>23 _____</p> <p>24 Michael Meo, Senior Legal Counsel CVS Pharmacy, Inc.</p>	

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12 such Party.

13 **IT IS SO AGREED**

<p>15 Dated: April <u>29</u>, 2021</p> <p>16</p> <p>17 </p> <p>18 _____</p> <p>19 Rashid Aziz, Principal Midwest Trading Group, Inc.</p>	<p>Dated: April __, 2021</p> <p>_____</p> <p>Susan Davia</p>
<p>21 Dated: April __, 2021</p> <p>22</p> <p>23 _____</p> <p>24 Michael Meo, Senior Legal Counsel CVS Pharmacy, Inc.</p>	

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16. AUTHORIZATION

Each of the persons signing this agreement represents and warrants that he or she is authorized and has the capacity to execute this Agreement on behalf of the respective Party and has read, understood, and agrees to all of the terms and conditions of this Agreement on behalf of such Party.

IT IS SO AGREED

<p>Dated: April __, 2021</p> <p>_____</p> <p>Rashid Aziz, Principal Midwest Trading Group, Inc.</p>	<p>Dated: April __, 2021</p> <p>_____</p> <p>Susan Davia</p>
<p>Dated: April <u>19</u>, 2021</p>  <p>_____</p> <p>Michael Meo, Senior Legal Counsel CVS Pharmacy, Inc.</p>	