

FILED

MAY 23 2023

JAMES M. KIM, Court Executive Officer  
MARIN COUNTY SUPERIOR COURT  
By: J. Berg, Deputu

1 Gregory M. Sheffer, State Bar No. 173124  
2 SHEFFER LAW FIRM  
3 232 E. Blithedale Ave., Suite 210  
4 Mill Valley, CA 94941  
5 Telephone: 415.388.0911

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7  
8 Attorneys for Plaintiff  
9 SUSAN DAVIA  
10  
11

12 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
13 FOR THE COUNTY OF MARIN  
14 UNLIMITED CIVIL JURISDICTION  
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SUSAN DAVIA,

Plaintiff,

v.

NEW SOLUTIONS, LLC, SCRIP, INC.,  
ALLEGRO MEDICAL SUPPLIES, INC.,  
ALLEGROMEDICAL.COM AND DOES 1-150,

Defendants.

Case No. CIV2101861

JUDGMENT ON AMENDED PROPOSITION  
65 SETTLEMENT

Action Filed: May 17, 2021  
Trial Date: None Assigned

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

10 IT IS SO ORDERED.

11 Dated: MAY 23 2023

**STEPHEN R. FRECCERO**

Honorable Stephen Freccero  
Judge of the Superior Court

# EXHIBIT A

1 Gregory M. Sheffer, State Bar No. 173124  
SHEFFER LAW FIRM  
2 232 E. Blithedale Ave., Suite 210  
Mill Valley, CA 94941  
3 Telephone: 415.388.0911  
Facsimile: 415.388.9911

4 Attorneys for Plaintiff  
5 SUSAN DAVIA

6  
7 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
8 FOR THE COUNTY OF MARIN  
9 UNLIMITED CIVIL JURISDICTION  
10

11 SUSAN DAVIA,

12 Plaintiff,

13 v.

14 NEW SOLUTIONS, LLC, SCRIP, INC.,  
ALLEGRO MEDICAL SUPPLIES, INC.,  
15 ALLEGROMEDICAL.COM AND DOES 1-150,

16 Defendants.  
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Case No. CIV2101861

**AMENDED CONSENT TO JUDGMENT  
SETTLEMENT AGREEMENT**

Action Filed: May 17, 2021  
Trial Date: None Assigned

1     **1.     INTRODUCTION**

2             **1.1     The Parties**

3     This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and  
4     between Susan Davia (“Davia”), on the one hand, and New Solutions (“New Solutions”), with  
5     New Solutions and Davia collectively referred to as the “Parties.”

6             **1.2     Davia**

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     New Solutions**

11     New Solutions 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.*  
13     (“Proposition 65”).

14            **1.4     General Allegations**

15     Davia alleges that Defendants participated in the manufacture, distribution and/or sale, in the  
16     State of California, of vinyl-covered, padded wheelchair components that exposed users to di(2-  
17     ethylhexyl)phthalate (“DEHP”) without first providing a “clear and reasonable warning” under  
18     Proposition 65. DEHP is listed as a carcinogen and reproductive toxin pursuant to Proposition 65.  
19     DEHP shall be referred to hereinafter be referred to collectively as the “Listed Chemical”.

20            **1.5     Notice of Violation**

21            On February 26, 2021, Davia served Defendants and various public enforcement agencies  
22     with a document entitled “60-Day Notice of Violation” that provided public enforcers and the  
23     noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for purportedly  
24     failing to warn consumers of the presence of DEHP found in the Covered Products (defined  
25     hereafter) sold in California (AG Notice 2021-00478).

26            The February 26, 2021, 60-Day Notice of Violation served on Defendants shall be referred to  
27     herein as the “Notice.”  
28

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

### **1.6 Complaint**

On May 17, 2021, Davia filed a Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV2101861, alleging violations by Defendants of Health and Safety Code § 25249.6 based on alleged exposures to DEHP in the Covered Products (the "Action").

### **1.7 No Admission**

This Agreement resolves claims that are denied and disputed by Defendants. The Parties enter into this Agreement pursuant to a full, final and binding settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Defendants deny the material factual and legal allegations contained in the Notice, maintain that they did not knowingly or intentionally expose California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered Products and further contend that all Covered Products they have manufactured, distributed and/or sold in California have been and are in compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission by Defendants of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement constitute or be construed as an admission by Defendants of any fact, finding, conclusion, issue of law, or violation of law, all of which are specifically denied by Defendants. However, notwithstanding the foregoing, this section shall not diminish or otherwise affect Defendants' obligations, responsibilities, and duties under this Agreement.

### **1.8 Consent to Jurisdiction**

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

1 **2. DEFINITIONS**

2 **2.1** The term “Product” or “Covered Product” shall mean all New Solutions vinyl  
3 padded wheelchair components such as arm and leg rests, including, but not limited to, desk  
4 length vinyl wheelchair armrest.

5 **2.2** The term “Phthalate Free” Covered Product shall mean that each vinyl component of  
6 each Covered Product contains less than or equal to 1,000 parts per million (“ppm”) of di(2-  
7 ethylhexyl) phthalate (“DEHP”), dibutyl phthalate (“DBP”), diisononyl phthalate (“DINP”),  
8 diisodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”) and butyl benzyl phthalate (“BBP”)  
9 as determined test results using Environmental Protection Agency (“EPA”) testing methodologies  
10 3580A and 8270C.

11 **2.3** “Effective Date” shall mean October 3, 2022.

12 **3. INJUNCTIVE-TYPE RELIEF**

13 **3.1 Product Reformulation Commitment**


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

21 **3.1.2** After the Effective Date, New Solutions shall provide the Phthalate Free phthalate  
22 concentration standards of Section 2.2 to any New Vendor of any Covered Product and request  
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 New Solutions was not obtaining Covered Products as of the Effective Date. New  
26 Solutions shall maintain copies of all New Vendor correspondence relating to the Phthalate Free  
27 concentration standards and shall produce such copies to Davia within fifteen (15) days of receipt  
28 of reasonable request made in writing from Davia.


1           **3.1.3** As of December 31, 2021, New Solutions shall label any Covered Product that does  
2 not meet the Phthalate Free chemical concentration levels and is sold to a California Customer  
3 with a clear and reasonable warning as set forth in Section 3.3. For every Covered Product New  
4 Solutions alleges is Phthalate Free after December 31, 2021, New Solutions shall, for a period of  
5 two (2) years after placing the order, maintain copies of all testing of such products demonstrating  
6 compliance with this section, shall maintain copies of all vendor correspondence relating to the  
7 Phthalate Free concentration standards of Section 2.2 and shall produce such copies to Davia  
8 within fifteen (15) days of receipt of reasonable request made in writing from Davia.

9           **3.2      Previously Distributed Covered Products.**

10           **3.2.1** Customer Notification - No later than the Effective Date, New Solutions shall send a  
11 letter, electronic or otherwise (“Notification Letter”) to: (1) each retailer or distributor in California  
12 to which New Solutions, after February 1, 2020, supplied any Covered Product, and (2) any other  
13 retailer or distributor that serves California customers and that New Solutions reasonably  
14 understands or believes has any inventory of Covered Products. For Covered Products containing  
15 only phthalate DEHP, the Notification Letter shall advise the recipient that Covered Products  
16 “contain DEHP, chemicals known to the State of California to cause cancer, birth defect or other  
17 reproductive harm”. The Notification letter shall inform the recipient apply a Proposition 65  
18 warning label to each Covered Product or its immediate packaging, which label shall contain one  
19 of the following warnings, before it is sold in the California market or to a California customer:

20                            **WARNING:** This product can expose you to  
21                           DEHP, which is known to the state of California to  
22                           cause cancer and birth defects or other  
23                           reproductive harm.

24                           or

25                            **WARNING:** Cancer and birth defects or other  
26                           reproductive harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

27           The Notification Letter shall be sent with return receipt requested. The Notification Letter shall  
28           request written confirmation from the recipient, within 15 days of receipt, that all such inventory



1 for California sale has been, or will be, labelled with the warning language identified in this  
2 section.


3 **3.2.2** New Solutions shall maintain records of compliance correspondence, inventory  
4 reports or other communication confirming compliance with § 3.2.1 for two (2) years from the  
5 Effective Date and shall produce copies of such records upon reasonable written request by Davia.

6 **3.3 Existing Inventory Product Labels**


7 For any Covered Products obtained by Defendants after the Effective Date that do not  
8 qualify as Phthalate Free, Defendants shall not sell or ship any of such Covered Product unless  
9 Defendants have complied with all warning requirements set forth in Section 3.3.1.

10 **3.3.1 Covered Product Label.**

11 For all Covered Products that contain one or more phthalate chemicals in excess of the  
12 Phthalate Free concentration limits, Defendants shall affix a label to the Covered Product or its  
13 immediate packaging that states:

14  
15  **WARNING:** This product can expose you  
16 to chemical[s] including [name of one or more  
17 chemicals], which [is] [are] known to the state  
18 of California to cause [cancer] and [birth  
defects or other reproductive harm.]

19 or


20  **WARNING:** [Cancer] [and] [birth defects or  
21 other reproductive harm] -  
www.P65Warnings.ca.gov

22 Defendant shall select the bracketed language as appropriate for the included phthalate(s) and  
23 shall comply with the requirements of 27 CCR Section 25603.

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

27 **3.3.2 Internet Website Warning.**

1 After the Effective Date, a warning must be given on an e-commerce or other website owned  
2 or operated by or for any of Defendants in conjunction with the advertisement, marketing, sale or  
3 offer of sale of any Covered Product. A warning will satisfy this requirement if it appears either:  
4 (a) on the same web page on which a Covered Product is displayed; (b) on the same web page as  
5 the order form for a Covered Product; (c) on the same page as the price for any Covered Product;  
6 or (d) on one or more web pages displayed to a purchaser during the checkout process. The  
7 following warning statement shall be used and shall appear in any of the above instances adjacent  
8 to or immediately following the display, description, or price of the Covered Product for which it  
9 is given in the same type size or larger than the Covered Product description text:

10  
11  **WARNING:** This product can expose you  
12 to chemical[s] including [name of one or more  
13 chemicals], which [is] [are] known to the state  
14 of California to cause [cancer] and [birth  
defects or other reproductive harm.]

15 Defendant shall select the bracketed language as appropriate for the included phthalate(s) and  
16 shall comply with the requirements of 27 CCR Section 25603.

#### 17 **4. MONETARY PAYMENTS**

##### 18 **4.1 Civil Penalty**

19 As a condition of settlement of all the claims referred to in this Settlement  
20 Agreement, New Solutions shall cause to be paid a total of \$3,000 in civil penalties in accordance  
21 with California Health & Safety Code § 25249.12(c)(1) & (d).

##### 22 **4.2 Augmentation of Penalty Payments**

23 For purposes of the penalty assessment under this Agreement, Davia is relying entirely  
24 upon Defendants and their counsel for accurate, good faith reporting to Davia of the nature and  
25 amounts of sales activity of the Covered Products during the relevant period. If within nine (9)  
26 months of the Effective Date, Davia discovers and presents to New Solutions evidence that during  
27 the relevant period the Covered Products have been sold to retailers or California consumers by  
28 New Solutions in sales volumes materially different (more than 25%) than those identified by

1 Defendants prior to execution of this Agreement, then New Solutions shall be liable for an  
2 additional penalty amount of \$10,000.00. Defendants shall also pay reasonable, additional  
3 attorney fees expended by Davia in discovering such additional sales and reporting them to New  
4 Solutions in accordance with this section. Davia agrees to provide New Solutions with a written  
5 demand for such additional penalties and attorney fees under this Section. After service of such  
6 demand, New Solutions shall have thirty (30) days to pay the additional civil penalties amount  
7 demanded or negotiate with Davia as to an agreed amount of fees and penalties to be paid in  
8 accordance with the method of payment of penalties and fees identified in Section 4.4. Should the  
9 parties dispute whether Davia has provided appropriate evidence of “sales volumes materially  
10 different (more than 25%) than those identified by New Solutions prior to execution of this  
11 Agreement”, then the parties shall have the issue decided by a mutually agreed upon Mediator,  
12 each side to bear its own costs of the mediation. Should mediation not be successful in resolving  
13 the matter then, within thirty (30) days of the mediation, Davia shall be entitled to file an action for  
14 breach of this Agreement in which the sole issues for resolution by the Court shall be: (1) whether  
15 during the relevant period Covered Products were sold to California consumers by New Solutions  
16 in sales volumes materially different (more than 25%) than those identified by New Solutions prior  
17 to execution of this Agreement; and (2) if the Court finds in favor of Davia on issue no. 1, the  
18 amount of legal fees, if any, Davia is entitled to recover for discovering the additional sales and  
19 reporting them to New Solutions in accordance with this section. In any action brought under this  
20 Section 4.2, the prevailing party shall be entitled to recover its attorney’s and other fees and costs.

#### 21 **4.3 Reimbursement of Davia’s Fees and Costs**

22 The Parties acknowledge that Davia and her counsel refused to consider any  
23 reimbursement of plaintiff’s fees or costs until all other terms of the settlement were reached. The  
24 Parties then reached an accord on the reimbursement due to Davia and compensation of her  
25 counsel under general contract principles and consistent with the private attorney general doctrine  
26 codified at California Code of Civil Procedure section 1021.5. Under these principles, New  
27 Solutions shall reimburse plaintiff the amount of \$32,000 for fees and costs incurred investigating  
28 and negotiating a resolution of this matter. Such payment shall be made payable to “Sheffer Law

1 Firm".

2 **4.4 Payment Procedures**

3 No later than fifteen (15) days after execution of this Agreement, New Solutions shall  
4 deliver three check settlement payments to the Sheffer Law Firm as follows:

5 a civil penalty check payable to "OEHHHA" (Memo line "Prop 65 Penalties, 2021-00478"), in  
6 the amount of \$2,250;

7 a civil penalty check payable to "Susan Davia" (Memo line "Prop 65 Penalties, 2021-00478")  
8 in the amount of \$750; and

9 an attorney fee and cost reimbursement check payable to "Sheffer Law Firm" (Memo line  
10 "2021-00478") in the amount of \$32,000.

11 The Sheffer Law Firm shall maintain possession of the settlement checks from New  
12 Solutions, without depositing them, until such time as the Court approves this settlement as  
13 contemplated by Section 6. Within five (5) business days of the date plaintiff provides electronic  
14 mail notice to counsel for defendants that the Court has approved this settlement, Plaintiff shall  
15 deliver the appropriate settlement payment checks to Susan Davia and OEHHHA and shall be free to  
16 deposit the Sheffer Law Firm settlement check in the firm account.

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

19 Sheffer Law Firm  
20 Attn: Proposition 65 Controller  
21 232 E. Blithedale Avenue, Suite 210  
Mill Valley, CA 94941

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

25 Sheffer Law Firm  
26 Attn: Proposition 65 Controller  
232 E. Blithedale Avenue, Suite 210  
Mill Valley, CA 94941

27 New Solutions shall be liable for payment of interest, at a rate of 10% simple interest, for all  
28 amounts due and owing from it under this Section that are not received by Sheffer Law Firm within

1 two business days of the due date for such payment.

2 **4.5 Issuance of 1099 Forms**

3 After this Agreement has been executed and funds have been transmitted to Davia's counsel  
4 at the address set forth in Section 4.4., New Solutions shall cause three separate 1099 forms to be  
5 issued, as follows:

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

9 (b) The second 1099 shall be issued to Davia in the amount paid pursuant to Sections 4.1  
10 and 4.2 (if any), whose address and tax identification number shall be provided to New  
11 Solutions upon request; and

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

2             **5.1     DAVIA’S RELEASE OF DEFENDANTS**

3             5.1.1 This settlement agreement is a full, final and binding resolution between Davia and  
4 Defendants of any violation of Proposition 65 that was or could have been asserted by Davia on  
5 behalf of herself, her representatives or attorneys, against Defendants, their directors, officers,  
6 employees, attorneys, parents and each entity to whom Defendants directly or indirectly  
7 distributes or sells Covered Products including, but not limited to, Scrip, Inc., Allegro Medial  
8 Supplies and Allegromedical.com, based on their alleged failure to warn about alleged exposures  
9 to the Listed Chemical contained in the Covered Products that were sold by Defendants before the  
10 Effective Date.

11            5.1.2 Davia, acting on her own behalf and in the public interest, releases Defendant from  
12 all claims for violations of proposition 65 up through the Effective Date based on failure to warn of  
13 the exposure to DEHP from Covered Products as set forth in the Notice. Compliance with the  
14 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to  
15 exposures to DEHP from Covered Products as set forth in the Notice of Violations.

16            5.1.3 Davia, in her individual capacity, also provides a general release and waiver which  
17 shall be effective as a full and final accord and satisfaction, and as a bar to all claims, actions and  
18 causes of action, of any nature, character or kind, known or unknown, suspected or unsuspected,  
19 arising out of the subject matter of the Notice and the Covered Products to the extent sold or  
20 distributed by Defendants prior to the Effective Date, and for all actions taken and statements  
21 made (or that could have been taken or made) by Defendants and their attorneys and other  
22 representatives in connection with negotiating this Agreement. Davia acknowledges that she is  
23 familiar with section 1542 of the California Civil Code, which provides as follows:

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

1 Davia, in her individual capacity expressly waives and relinquishes all rights and benefits  
2 that she may have under, or which may be conferred on her by the provisions of Section 1542 of  
3 the California Civil Code as well as under any other state or federal statute or common law  
4 principle of similar effect, to the fullest extent that she may lawfully waive such rights or benefits  
5 pertaining to the released matters. In furtherance of such intention, the release hereby given shall  
6 be and remain in effect as a full and complete release notwithstanding the discovery or existence of  
7 any such additional or different claims or facts arising out of the released matters.

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

## 13 **5.2 DEFENDANTS RELEASE OF DAVIA**

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

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

29 Defendants expressly waive and relinquishes all rights and benefits which they may have  
30 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil

1 Code as well as under any other state or federal statute or common law principle of similar effect,  
2 to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released  
3 matters identified in this Section 5.2. In furtherance of such intention, the release hereby given  
4 shall be and remain in effect as a full and complete release notwithstanding the discovery or  
5 existence of any such additional or different claims or facts arising out of the released matters.  
6

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

## 9 **6. COURT APPROVAL**

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

## 19 **7. SEVERABILITY**

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

## 23 **8. GOVERNING LAW**

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

## 25 **9. NOTICES**

26 When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by  
27 FedEx (or other tracked delivery service) or electronic mail to the following:  
28



1   **For Defendants:**

2       Nicholas Hambrick, owner  
3       New Solutions, LLC  
4       4321 Alamo St  
5       Riverside, CA 92501

6   **For Defendants' Counsel:**

7       Ryan Landis, Esq.  
8       Carson Misiura Bergeron Goldman Gardella Gaughan  
9       rlandis@CMBG3.COM

10   **For Davia:**

11       Proposition 65 Coordinator  
12       Sheffer Law Firm  
13       232 E. Blithedale Avenue, Suite 210  
14       Mill Valley, CA 94941

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

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

18       Davia agrees to comply with the reporting form requirements of California Health & Safety  
19   Code §25249.7(f).

20   **11. MODIFICATION**

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

22   **12. ENTIRE AGREEMENT**

23       This Agreement contains the sole and entire agreement and understanding of the Parties  
24   with respect to the entire subject matter hereof, and all prior discussions, negotiations,  
25   commitments, and understandings related hereto. No representations, oral or otherwise, express  
26   or implied, other than those contained herein have been made or relied on by any Party hereto  
27   (other than the sales figures provided to Davia). No other agreements not specifically referred to  
28   herein, oral or otherwise, shall be deemed to exist or to bind any of the Parties. No  
supplementation, modification, waiver, or termination of this Agreement shall be binding unless  
executed in writing by the Party to be bound. No waiver of any of the provisions of this

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

3 **13. ATTORNEY'S FEES**

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

9 **14. NEUTRAL CONSTRUCTION**

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

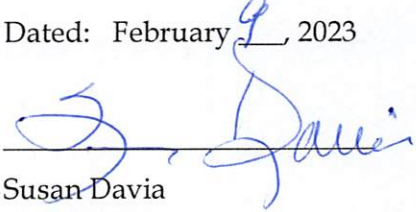
20 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

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

1 **16. AUTHORIZATION**

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

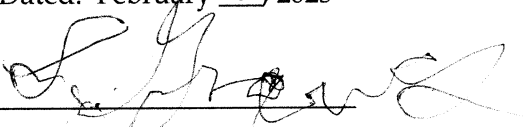
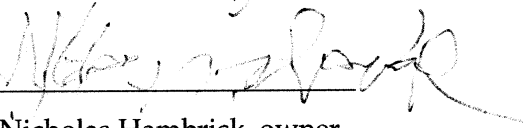
6 **IT IS SO AGREED**

<p>7 Dated: February __, 2023</p> <p>8 _____</p> <p>9 Leonard Graves, owner 10 New Solutions</p>	<p>8 Dated: February 9, 2023</p> <p>9 </p> <p>10 Susan Davia</p>
<p>11 Dated: February __, 2023</p> <p>12 _____</p> <p>13 Nicholas Hambrick, owner 14 New Solutions</p>	

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5 such Party.

6 **IT IS SO AGREED**

<p>8 Dated: February <u>15</u> 2023</p> <p>9 </p> <p>10 _____</p> <p>11 Leonard Graves, owner New Solutions</p>	<p>Dated: February __, 2023</p> <p>_____</p> <p>Susan Davia</p>
<p>13 Dated: February <u>15</u> 2023</p> <p>14 </p> <p>15 _____</p> <p>16 Nicholas Hambrick, owner New Solutions</p>	