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4 Attorneys for Plaintiff
SUSAN DAVIA
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FILED

JUN 20 2023

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: D. Macias, Deputy

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

12 SUSAN DAVIA,

13 Plaintiff,

14 v.

15 MADA MEDICAL PRODUCTS, INC., 4MD
16 MEDICAL SOLUTIONS LLC and DOES 1-
150,

17 Defendants.
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Case No. CIV2200189

**JUDGMENT ON PROPOSITION 65
SETTLEMENT**

Action Filed: January 25, 2022
Trial Date: None Assigned

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

10 IT IS SO ORDERED.

11 Dated: **JUN 20 2023**

STEPHEN P. FRECCERO

Honorable Stephen Freccero
Judge of the Superior Court

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EXHIBIT A

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Attorneys for Plaintiff
SUSAN DAVIA

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

SUSAN DAVIA,

Plaintiff,

v.

MADA MEDICAL PRODUCTS, INC., 4MD
MEDICAL SOLUTIONS LLC and DOES 1-
150,

Defendants.

Case No. CIV 2200189

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This consent to judgment settlement agreement (“Agreement” or “Settlement Agreement”)
4 is entered into by and between noticing party Susan Davia (“Davia”) and noticed party MADA
5 Medical Products, Inc. (“MADA”), with Davia and MADA each referred to as a “Party” and
6 collectively referred to as the “Parties.”

7 **1.2 Davia**

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

11 **1.3 MADA Medical Products, Inc.**

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

15 **1.4 General Allegations**

16 Davia alleges that MADA is responsible for the design, manufacture, distribution and/or
17 sale, in the State of California, of oxygen cylinder carry bags with vinyl windows and vinyl oxygen
18 cylinder dust caps that expose users to di(2-ethylhexyl)phthalate (“DEHP”) without first providing
19 “clear and reasonable warning” under Proposition 65. Pursuant to Proposition 65, DEHP is listed
20 as a carcinogen and reproductive toxin. DEHP shall be referred to hereinafter as the “Listed
21 Chemical.”

22 **1.5 Notice of Violation**

23 On August 9, 2021, Davia served MADA and various public enforcement agencies with a
24 document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed
25 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
26 consumers of the presence of DEHP found in the oxygen cylinder shoulder bag products with vinyl
27 windows sold in California (AG Notice 2021-01930). On September 14, 2021, Davia served MADA
28 and various public enforcement agencies with a document entitled “Supplemental 60-Day Notice of

1 Violation” that provided public enforcers and the noticed entities with notice of alleged violations
2 of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DEHP found in
3 the oxygen cylinder shoulder bag products with vinyl windows and vinyl oxygen cylinder dust
4 caps sold in California (AG Notice 2021-02287). The August 9, 2021, and September 14, 2021,
5 Notices of Violation shall hereafter be collectively referred to as “Notice.” MADA represents that,
6 as of the date it executes this Agreement, it is not aware of any public enforcer that is diligently
7 prosecuting a Proposition 65 enforcement action related to DEHP in the oxygen cylinder shoulder
8 bag or dust cap products as identified in the Notice.

9 **1.6 Complaint**

10 On January 25, 2022, Davia filed a Complaint in the Superior Court of the State of California
11 for the County of Marin, Case No. CIV2200189, alleging violations by Defendants of Health and
12 Safety Code § 25249.6 based on the alleged exposures to DEHP in the Covered Products. (the
13 “Action”).

14 **1.7 No Admission**

15 This Agreement resolves claims that are denied and disputed by MADA. The Parties enter
16 into this Agreement pursuant to a full and final settlement of any and all claims between the Parties
17 for the purpose of avoiding prolonged litigation. MADA denies the material factual and legal
18 allegations contained in the Notice, maintains that it did not knowingly or intentionally expose
19 California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered
20 Products and otherwise contends that, all Covered Products it has manufactured, distributed
21 and/or sold in California have been and are in compliance with all applicable laws and regulations,
22 including Proposition 65. Nothing in this Agreement shall be construed as an admission by MADA
23 of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement
24 constitute or be construed as an admission by MADA of any fact, finding, conclusion, issue of law,
25 or violation of law, such being specifically denied by MADA. However, notwithstanding the
26 foregoing, this section shall not diminish or otherwise affect MADA’s obligations, responsibilities,
27 and duties under this Agreement.

1 **1.8 Consent to Jurisdiction**

2 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
3 Court has jurisdiction over MADA as to this Agreement, that venue for any action to enforce this
4 Agreement is proper in County of Marin and that this Agreement is made pursuant to Code of
5 Civil Procedure Section 664.6.

6 **2. DEFINITIONS**

7 **2.1** “Covered Product” shall mean all MADA brand oxygen cylinder carry bags with
8 vinyl windows, including, but not limited to, MADA Soft Shoulder Bag for M7 &"C" Size Cylinder
9 1408, MADA M6 Shoulder Bag 1209 and MADA Shoulder for D cylinder 1509 and all MADA
10 distributed vinyl cylinder dust caps.

11 **2.2** “Phthalate Free” Covered Products shall mean any accessible component of any
12 Covered Product contains less than or equal to 1,000 parts per million (“ppm”) of DEHP, DINP, di-
13 n-butyl phthalate (“DBP”), di-isodecyl phthalate (“DIDP”), di-n-hexyl phthalate (“DnHP”) and
14 butyl benzyl phthalate (“BBP”) as determined by a minimum of duplicate quality controlled test
15 results using Environmental Protection Agency (“EPA”) testing methodologies 3580A and 8270C or
16 equivalent methodologies utilized by federal or state agencies to determine the presence and
17 measure the quantity of phthalates in solid substances.

18 **2.3** “Effective Date” shall mean December 15, 2021.

19 **3. INJUNCTIVE-TYPE RELIEF**

20 **3.1 Products No Longer in MADA’s Control**

21 No later than the Effective Date, MADA shall send a letter, electronic or otherwise
22 (“Notification Letter”) to the manager for any retail entity to which MADA has distributed or sold
23 Covered Products since September 1, 2019, and to any operations manager for any ecommerce
24 retail website that MADA understands or believes offers Covered Products for sale to consumers
25 with a ship to address in California. The Notification Letter shall advise the recipient that Covered
26 Products “have been tested for the presence of phthalates and found to contain DEHP, a chemical
27 known to the State of California to cause cancer and reproductive harm,” and request that the
28 recipient either pull all Covered Products from store displays and return its entire inventory of

1 Covered Products to MADA or label the Covered Products remaining in inventory for sale in or to
2 California with a label that complies with Section 3.3. The Notification Letter shall request a
3 response from the recipient within 15 days, confirming that the letter was received. MADA shall
4 maintain records of all correspondence or other communications generated pursuant to this Section
5 for two years after the Effective Date and shall promptly produce copies of such records upon
6 Davia's written request.

7 **3.2 Product Reformulation Commitment**

8 **3.2.1** No later than the Effective Date, MADA shall provide the Phthalate Free
9 concentration standards of Section 2.2 to its then-current vendors or manufacturers of any Covered
10 Product and instruct such entities not to incorporate any raw or component materials that do not
11 meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product or to
12 supply any Covered Product to MADA that is not Phthalate Free. MADA shall maintain copies of
13 all vendor correspondence relating to the Phthalate Free concentration standards and shall produce
14 such copies to Davia within fifteen (15) days of receipt of written request from Davia.

15 **3.2.2** After the Effective Date, MADA shall provide the Phthalate Free concentration
16 standards of Section 2.2 to any new vendors or manufacturers of any Covered Product and instruct
17 such entities not to incorporate any raw or component materials that do not meet the Phthalate Free
18 concentration standards of Section 2.2 into any Covered Product. Prior to purchase and acquisition
19 of any Covered Product from any new vendor, MADA shall obtain a written confirmation and
20 accompanying laboratory test result from the new vendor demonstrating compliance with the
21 Phthalate Free concentration standard in all materials comprising the Covered Product. For every
22 Covered Product MADA manufactures, causes to be manufactured, orders, causes to be ordered or
23 otherwise obtains from a new vendor after the Effective Date, MADA shall maintain copies of all
24 testing of such products demonstrating compliance with this section, shall maintain copies of all
25 vendor correspondence relating to the Phthalate Free concentration standards for two (2) years
26 from the Effective Date and shall produce such copies to Davia within fifteen (15) business days of
27 receipt of written request from Davia. For every Covered Product MADA contends meets the
28 Phthalate Free concentration standards and intends to offer for sale without a warning pursuant to

1 Section 3.3 below, MADA shall maintain copies of all vendor correspondence relating to the
2 Phthalate Free concentration standards for two (2) years from the Effective Date and shall produce
3 such copies to Davia within fifteen (15) business days of receipt of written request from Davia.


4 **3.2.3** As of February 1, 2022, MADA shall not manufacture, cause to be manufactured,
5 purchase or otherwise obtain any Covered Product unless such Covered Product meets the
6 Phthalate Free concentration standards of this Agreement.

7 **3.3 Interim Covered Product Warnings**


8 **3.3.1** For any inventory of Covered Products obtained by MADA prior to February 1,
9 2022, that is not confirmed to be Phthalate Free, MADA shall not distribute, sell or ship, or cause to
10 be distributed, sold or shipped, any such Covered Product unless such Covered Product is shipped
11 with product package label as set forth hereafter.

12 Each such warning utilized by MADA for any Covered Product shall be prominently placed
13 either on the product, its labeling or its packaging with such conspicuousness as compared with
14 other words, statements, designs, or devices as to render it likely to be read and understood by an
15 ordinary individual under customary conditions *before* purchase or use.

16 Each warning shall either be printed directly on the Covered Product consumer cardboard
17 packaging or shall be affixed to the consumer cardboard packaging. Each warning shall include the
18 yellow triangle with an internal exclamation point and state:

19  **WARNING:** The vinyl materials of this product can expose
20 you to chemicals, including DEHP, that are known to the State of
21 California to cause cancer and birth defects or other
22 reproductive harm. For more information go to
23 www.P65Warnings.ca.gov.


23 or

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


26 **3.4 Internet Ecommerce Covered Product Warnings**

27 A warning must be given in conjunction with the sale, or offer of sale, by MADA of any
28 Covered Product not confirmed by MADA to be Phthalate Free via any ecommerce website owned,

1 operated, managed or controlled by, or for the benefit of, MADA. A warning will satisfy this
2 requirement if it appears either: (a) on the same web page on which a Covered Product is
3 displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page
4 as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser
5 during the checkout process. One of the following warning statements shall be used and shall
6 appear in any of the above instances adjacent to or immediately following the display, description,
7 or price of the Covered Product for which it is given, or through a hyperlink using the word
8 “WARNING”, in the same type size or larger than the Covered Product description text:

9  **WARNING:** This product can expose you to chemicals
10 including DEHP which are known to the State of California to
11 cause cancer and birth defects or other reproductive harm. For
12 more information go to www.P65Warnings.ca.gov.

13 Alternatively, the following “short form” warning may be used on the ecommerce website, but only
14 if the same warning language also appears on the product label or consumer packaging of the
15 Covered Product itself.

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

18 **4. MONETARY PAYMENTS**

19 **4.1 Civil Penalty**

20 As a condition of settlement of all the claims referred to in this agreement, MADA shall pay
21 a total of \$3,200 in civil penalties in accordance with California Health & Safety Code §
22 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental
23 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Davia.

24 **4.2 Augmentation of Penalty Payments**

25 For purposes of the penalty assessment under this Agreement, Davia is relying entirely
26 upon MADA for accurate, good faith reporting to Davia of the nature and amounts of relevant sales
27 activity. If within nine (9) months of the Effective Date, Davia discovers and presents evidence to
28 counsel for MADA that the Covered Products have been distributed in California in sales volumes
materially different (more than 25%) than those identified by MADA prior to execution of this
Agreement, and MADA does not provide Davia with competent and credible evidence to dispute

1 this claim, then MADA shall be liable for an additional penalty amount of \$10,000.00. Davia agrees
2 to provide counsel for MADA with a written demand for all such additional penalties and attorney
3 fees under this Section. After service of such demand, MADA shall have thirty (30) days to either
4 present evidence to counter this claim or to agree to the amount of fees and penalties owing by
5 MADA and submit such payment to Davia in accordance with the method of payment of penalties
6 and fees identified in Section 4.1 and 4.4. Should this thirty (30) day period pass without any such
7 resolution between the parties and payment of such additional penalties and fees, Davia shall be
8 entitled to file a formal legal claim for the additional civil penalties pursuant to this Section and the
9 prevailing party to such action shall be entitled to all reasonable attorney fees and costs relating to
10 such claim.

11 **4.3 Reimbursement of Davia’s Fees and Costs**

12 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
13 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
14 issue to be resolved after the material terms of the agreement had been settled. MADA expressed a
15 desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
16 The Parties then attempted to (and did) reach an accord on the compensation due to Davia and her
17 counsel under general contract principles and the private attorney general doctrine codified at
18 California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees
19 that may be incurred on appeal. Under these legal principles, MADA shall pay Davia’s counsel the
20 amount of \$34,300 for fees and costs incurred investigating, litigating and enforcing this matter.

21 **4.4 Payment Procedures**

22 MADA shall deliver settlement payment checks to plaintiff’s counsel as follows:

23 No later than April 1, 2023, one civil penalty check payable to “OEIHA” (EIN: 68-0284486,
24 Memo line “Prop 65 Penalties, 2021-01930, 2021-02287”), in the amount of \$2,400;

25 No later than April 1, 2023, one civil penalty check payable to “Susan Davia” (Tax ID to be
26 supplied, Memo line “Prop 65 Penalties, 2021-01930, 2021-02287”) in the amount of \$800;

27 No later than April 1, 2023, one fee and cost reimbursement check payable to “Sheffer Law
28 Firm” (EIN 55-08-58910, Memo line “2021-01930, 2021-02287”) in the amount of \$9,300;

1 No later than July 1, 2023, a second fee and cost reimbursement check payable to "Sheffer
2 Law Firm" (EIN 55-08-58910, Memo line "2021-01930, 2021-02287") in the amount of \$12,500; and

3 No Later than October 1, 2023, a third fee and cost reimbursement check payable to "Sheffer
4 Law Firm" (EIN 55-08-58910, Memo line "2021-01930, 2021-02287") in the amount of \$12,500.

5 All Section 4.1 and 4.2 payments shall be delivered to plaintiff's counsel at the following
6 address:

7 Sheffer Law Firm
8 Attn: Proposition 65 Controller
9 232 E. Blithedale Ave., Suite 210
10 Mill Valley, CA 94941

11 Davia shall not deposit any check received from MADA under this Section until this
12 Agreement has been approved by the Court as contemplated by Section 7.

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

16 Sheffer Law Firm
17 Attn: Proposition 65 Controller
18 232 E. Blithedale Avenue, Suite 210
19 Mill Valley, CA 94941

20 MADA shall be liable for payment of interest, at a rate of 10% simple interest, for funds due
21 and owing from it under this Section that are not available for receipt by Sheffer Law Firm within
22 five business days of the due date for such payment.

23 While the obligations of this agreement are binding upon execution, the Release of MADA
24 shall not become effective until after all monetary payments have been made by MADA and all
25 funds have cleared. If MADA fails to deliver any of the Section 4.1 payments pursuant to the
26 timeline and procedures of Section 4.4, or if there are insufficient funds for any of the settlement
27 payment checks delivered, the Section 5.1 Release of MADA is voided, any limitations period
28 attached to the subject claim shall be deemed tolled as of the August 9, 2021, service of AG Notice
2021-01930 on MADA and Davia shall retain the right to pursue all appropriate additional remedies
against MADA, including additional enforcement of this claim under Proposition 65.

1 **4.5 Issuance of 1099 Forms**

2 After this Agreement has been executed and the settlement funds have been transmitted to
3 Davia’s counsel, MADA shall issue three separate 1099 forms, as follows:

4 (a) issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010,
5 Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Sections 4.1 and 4.2;

6 (b) issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2, whose address
7 and tax identification number shall be furnished upon request; and

8 (c) issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to
9 Section 4.2 and 4.3.

10 **5. RELEASES**

11 **5.1 Davia’s Release of MADA**

12 **5.1.1** This settlement agreement is a full, final and binding resolution between Davia, and
13 MADA of any violation of Proposition 65 that was or could have been asserted by Davia,
14 individually and on behalf of herself and her past and current representatives, agents, attorneys,
15 successors and/or assigns (“Releasers”) against MADA, and each of their directors, officers,
16 employees, attorneys, agents, parents, and subsidiaries (“Releasees”), based on their failure to warn
17 about alleged exposures to DEHP contained in the Covered Products that were manufactured,
18 distributed, sold or offered for sale by MADA before the Effective Date. Compliance with the terms
19 of this Agreement constitutes compliance with Proposition 65 by MADA with regard to the alleged
20 or actual failure to warn about exposure to DEHP from Covered Products manufactured, sold or
21 distributed for sale after the Effective Date.

22 **5.1.2** In further consideration of the promises and agreements herein contained, and for so
23 long as MADA remains in compliance with the terms of this Agreement, Davia on behalf of herself,
24 her past and current representatives, agents, attorneys, successors and/or assigns hereby waives all
25 Davia’s rights to institute or participate in, directly or indirectly, any form of legal action and
26 releases all claims that Davia may have, including, without limitation, all actions, and causes of
27 action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties,
28 losses, or expenses -- including, but not limited to, investigation fees, expert fees, and attorneys’

1 fees,-- limited to and arising under Proposition 65 with respect to the DEHP in the Covered
2 Products manufactured, distributed, sold and/or offered for sale by MADA before the Effective
3 Date (collectively "claims"), against MADA and Releasees.

4 **5.1.3** Davia also, in her individual capacity and on behalf of her past and current
5 representatives, agents, attorneys, successors and/or assigns, provides a general release herein
6 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
7 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands
8 of Davia, of any nature, character or kind, known or unknown, suspected or unsuspected, arising
9 out of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by
10 MADA or Releasees before the Effective Date. Davia acknowledges that she is familiar with section
11 1542 of the California civil code, which provides as follows:

12 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT
13 THE CREDITOR OR RELEASING PARTY DOES NOT KNOW
14 OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME
15 OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY
16 HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS
17 OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED
18 PARTY.

19 Davia, in her individual capacity and on behalf of her past and current representatives,
20 agents, attorneys, successors and/or assigns expressly waives and relinquishes any and all rights
21 and benefits that she may have under, or which may be conferred on her by the provisions of
22 Section 1542 of the California Civil Code as well as under any other state or federal statute or
23 common law principle of similar effect, to the fullest extent that she may lawfully waive such rights
24 or benefits pertaining to the released matters. In furtherance of such intention, excepting Section
25 4.2, the release hereby given shall be and remain in effect as a full and complete release
26 notwithstanding the discovery or existence of any such additional or different claims or facts
27 arising out of the released matters.

28 **5.1.4** This section 5.1 release shall not extend upstream to any entities, other than MADA,
that manufactured the Covered Products or any component parts thereof, or any distributors or
suppliers who sold the covered products or any component parts thereof to MADA.

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5.2 MADA’s Release of Davia

The Release by Davia is mutual. MADA, each on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against Davia and her attorneys and other representatives, for any and all actions taken or statements made (or those that could have been taken or made) by Davia and her attorneys and other representatives, whether in the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in this matter, or with respect to the Products. MADA acknowledges that it is familiar with Section 1542 of the California Civil Code, which provides as follows:

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

MADA expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Section 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 he may lawfully waive such rights or benefits pertaining to the released matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a full and complete release notwithstanding the discovery or existence of any such additional or different claims or facts arising out of the released matters.

6. ENFORCEMENT

Prior to bringing any motion, order to show cause, or other proceeding to enforce Proposition 65 or any terms of this Agreement relating to the alleged sale in California of any Covered Product without a warning and which is alleged to not be Phthalate Free, in actual or alleged violation of this Agreement, Davia shall provide a Notice of Violation (“NOV”) to MADA. The NOV shall include, for each Covered Product alleged to be violation of this Agreement: the date of alleged violations(s), place of sale, date and proof of purchase (if relevant), and any test data obtained by Davia regarding each such Covered Product. Davia shall take no further action

1 regarding any alleged violation nor seek any monetary recovery for herself, her agents or her
2 counsel if, within 30 days of receiving such NOV, MADA demonstrates (1) that the Covered
3 Product was manufactured distributed, sold or offered for sale by MADA before May 1, 2019; or (2)
4 that MADA directed the retailer or distributor of the Covered Product to take corrective action by
5 placing an appropriate warning on the Covered Product(s) compliant with Section 3.3 of this
6 Agreement following service of the NOV; or (3) that the Covered Products are Phthalate Free.

7 **7. COURT APPROVAL**

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

17 **8. SEVERABILITY**

18 If any of the provisions of this Agreement are found by a court to be unenforceable, the
19 validity of the enforceable provisions remaining, after express agreement of the Parties, shall not be
20 adversely affected, unless the Court finds that any unenforceable provision is not severable from
21 the remainder of the Agreement.

22 **9. GOVERNING LAW**

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

24 **10. NOTICES**

25 When any Party is entitled to receive any notice under this Agreement, the notice shall be
26 sent by certified mail or electronic mail to the following:

27 For MADA:

28 Jeff Adam, CEO

1 MADA Medical Products, Inc.
2 625 Washington Avenue
3 Carlstadt, NJ 07072

4 With a copy to its counsel:

5 William Tarantino, Esq.
6 Morrison & Foerster LLP
7 425 Market St.
8 San Francisco, CA 94105
9 WTarantino@mofo.com

10 For Davia to:

11 Proposition 65 Coordinator
12 Sheffer Law Firm
13 232 E. Blithedale Ave., Suite 210
14 Mill Valley, CA 94941
15 gregs@sheffer-law.net

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

18 **11. 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).

21 **12. MODIFICATION**

22 This Agreement may be modified only by written agreement of the Parties.

23 **13. ENTIRE AGREEMENT**

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

1 **14. ATTORNEY'S FEES**

2 Should either Party prevail on any motion, application for order to show cause or other
3 proceeding to enforce a violation of this Agreement, that Party shall be entitled to its reasonable
4 attorney fees and costs incurred as a result of such motion, order or application, consistent with
5 C.C.P. §§ 1021 and 1021.5. Except as otherwise specifically provided herein, each Party shall bear
6 its own costs and attorney's fees in connection with the Notice. Nothing in this Section shall
7 preclude a Party from seeking an award of sanctions pursuant to law.

8 **15. NEUTRAL CONSTRUCTION**

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

18 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

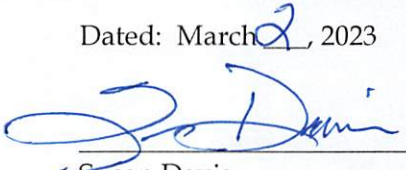
22 **17. AUTHORIZATION**

23 The undersigned are authorized to execute this Agreement on behalf of their respective
24 Parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

25 **IT IS SO AGREED**

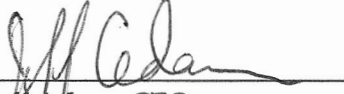
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<p>Dated: March __, 2023</p> <p>_____ Jeff Adam, CEO MADA Medical Products, Inc.</p>	<p>Dated: March 2, 2023</p> <p> _____ Susan Davia</p>
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Dated: March 3, 2023



Jeff Adam, CEO
MADA Medical Products, Inc.

Dated: March __, 2023

Susan Davia