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4 Attorneys for Plaintiff
SUSAN DAVIA

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

10 SUSAN DAVIA,

11 Plaintiff,

12 v.

13 DUKAL CORPORATION, 4MD MEDICAL
14 SOLUTIONS LLC and DOES 1-150,

15 Defendants.

Case No. CIV2101807

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

Action Filed: May 10, 2021
Trial Date: None Assigned

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1. INTRODUCTION

1.1 The Parties

This Consent to Judgment agreement (“Agreement”) is entered into by and between Susan Davia (“Davia”), on the one hand, and Dukal Corporation (“Dukal”) on the other hand, with Dukal referred to as Defendant and with Davia and Defendant collectively referred to as the “Parties.”

1.2 General Allegations

Davia alleges that Dukal participated in the manufacture, distribution and/or sale, in the State of California, of Tech-Med medical supplies with vinyl components (“Tech-Med Covered Products”) that exposed users to di(2-ethylhexyl)phthalate (“DEHP”) and diisononyl phthalate (“DINP”) without first providing a “clear and reasonable warning” under Proposition 65. DEHP and DINP shall hereinafter be referred to collectively as the “Listed Chemical”.

1.3 Notices of Violation

On December 10, 2020, Davia served Dukal and various public enforcement agencies with a document entitled “60-Day Notice of Violation” for Dukal’s alleged failure to warn consumers of the presence of the DINP found in the Tech-Med medical supplies with vinyl components sold in California (AG Notice 2020-03368). On February 26, 2021, Davia served Dukal and various public enforcement agencies with another document entitled “60-Day Notice of Violation” Dukal’s alleged failure to warn consumers of the presence of DEHP found in the Tech-Med blood pressure monitor kits with vinyl components sold in California (AG Notice 2021-00476). The December 10, 2020, and February 26, 2021, 60-Day Notices of Violation served on Defendants shall be collectively referred to herein as the “Notices.”

1.4 Complaint

On May 10, 2021, Davia filed a Complaint in the Superior Court of the State of California for the County of Marin, Case No. CIV2101807, alleging violations by Defendant of Health and Safety Code § 25249.6 based on the alleged exposures to DEHP and DINP in the Tech-Med Covered Products (the “Action”).

1 **1.5 Monetary Sanctions and Default**

2 On or about August 29, 2022, Hon. Judge James Chou of the Marin County Superior Court
3 issued an Order including monetary sanctions against Dukal and The Engel Law Group, PLLC, in
4 the amount of \$2,290. On or about December 14, 2022, Hon. Judge James Chou issued another
5 Order including monetary sanctions against Dukal and The Engel Law Group, PLLC, in the
6 amount of \$2,490. On or about December 14, 2022, Hon. Judge James Chou issued another Order
7 including monetary sanctions against Dukal and The Engel Law Group, PLLC, in the amount of
8 \$2,240. These monetary sanctions have already been paid in full by Dukal.

9 On May 17, 2023, the Marin County Superior Court struck the Answer of defendant Dukal
10 and entered default against it. On or about August 9, 2023, Dukal, through newly retained
11 counsel, filed a Motion to Vacate Default and Sanctions. The Court granted the Motion to set aside
12 the entry of default but did not set aside any other prior sanction order, monetary or otherwise.

13 **2. DEFINITIONS**

14 **2.1** The term “Covered Product” or “Tech-Med Covered Product” shall mean all Tech-
15 Med cervical traction and blood pressure monitor kit products made with vinyl components,
16 including, but not limited to, Tech-Med Standard Sphygmomanometer Kit (Item 2024 T) and Tech
17 Med 6030 Overdoor Traction Set with Vinyl Bag sold into the state of California.

18 **2.2** The term “Phthalate Free” Covered Product shall mean that each vinyl component of
19 each Covered Product contains less than or equal to 1,000 parts per million (“ppm”) of di(2-
20 ethylhexyl) phthalate (“DINP”), dibutyl phthalate (“DBP”), diisononyl phthalate (“DINP”),
21 diisodecyl phthalate (“DINP”), di-n-hexyl phthalate (“DnHP”) and butyl benzyl phthalate (“BBP”)
22 as determined test results using Environmental Protection Agency (“EPA”) testing methodologies
23 3580A and 8270C.

24 **2.3** “Effective Date” shall mean August 15, 2024.

25 **3. INJUNCTIVE-TYPE RELIEF**

26 **3.1 Product Reformulation Commitment**

27 **3.1.1** No later than the Effective Date, Dukal shall provide the Phthalate Free phthalate
28 concentration standards of Section 2.2 to any then-current vendor of any Covered Product and


1 request such entity not to provide any Covered Product that does not meet the Phthalate Free
2 concentration standards of Section 2.2. Dukal shall maintain copies of all vendor correspondence
3 relating to the Phthalate Free concentration standards for two (2) years after the Effective Date and
4 shall produce such copies to Davia within fifteen (15) days of receipt of reasonable request made in
5 writing from Davia.

6 **3.1.2** After the Effective Date, Dukal shall provide the Phthalate Free phthalate
7 concentration standards of Section 2.2 to any New Vendor of any Covered Product and request
8 such entity not to provide any Covered Product that does not meet the Phthalate Free
9 concentration standards of Section 2.2. "New Vendor" means any vendor of Covered Products
10 from whom Dukal was not obtaining Covered Products as of the Effective Date. Prior to purchase
11 and acquisition of any Covered Product from any New Vendor, Dukal shall obtain written
12 confirmation and laboratory test result from the New Vendor demonstrating compliance with the
13 Phthalate Free phthalate concentration standard for any Covered Product. For two (2) years after
14 the Effective Date, for every Covered Product Dukal manufactures, causes to be manufactured,
15 orders, causes to be ordered or otherwise obtains from a New Vendor, Dukal shall maintain copies
16 of all testing of such products demonstrating compliance with this section, shall maintain copies of
17 all vendor correspondence relating to the Phthalate Free concentration standards and shall
18 produce such copies to Davia within fifteen (15) days of receipt of reasonable request made in
19 writing from Davia.


20 **3.2 Previously Distributed Covered Products.**

21 **3.2.1** Customer Notification - No later than the Effective Date, Dukal shall send a letter,
22 electronic or otherwise ("Notification Letter") to: (1) each retailer or distributor in California to
23 which Dukal, after February 1, 2020, supplied any Covered Product without a clear and reasonable
24 Proposition 65 warning, and (2) any other retailer or distributor that serves California customers
25 and that Dukal reasonably understands or believes has any inventory of Covered Products
26 without a clear and reasonable Proposition 65 warning. The Notification Letter shall advise the
27 recipient that Covered Products "contain DEHP and DINP, chemicals known to the State of
28 California to cause cancer and birth defect or other reproductive harm". The Notification letter

1 shall inform the recipient apply a Proposition 65 warning label to each Covered Product or its
2 immediate packaging, which label shall contain one of the following warnings, before it is sold in
3 the California market or to a California customer:

4
5  **WARNING:** This product can expose you to
6 chemicals, including [di(2-ethylhexyl)phthalate
7 (“DEHP”)] [and] [diisononyl phthalate (DINP),]
8 which are known to the State of California to
9 cause [cancer and] birth defects or other
10 reproductive harm. For more information go to
11 www.P65Warnings.ca.gov;

12 or

13  **WARNING:** [Cancer and] Reproductive Harm
14 - www.P65Warnings.ca.gov

15 The Notification Letter shall identify for the customer which products have which chemical(s) and
16 instruct the customer to select the appropriate bracketed warning language for each subject
17 product depending upon whether DEHP, DINP, or both, are present in the product. The
18 Notification Letter shall be sent with return receipt requested. The Notification Letter shall request
19 written confirmation from the recipient, within 15 days of receipt, that all such inventory for
20 California sale has been, or will be, labelled with the warning language identified in this section.


21 **3.2.2** Dukal shall maintain records of compliance correspondence, inventory reports or
22 other communication confirming compliance with § 3.2.1 for two (2) years from the Effective Date
23 and shall produce copies of such records upon reasonable written request by Davia.

24 **3.3 Existing Inventory Product Labels**


25 As of the Effective Date, for any Covered Products distributed by Dukal that have not been
26 confirmed to meet the Phthalate Free phthalate concentration standards of Section 2.2, Dukal shall
27 not sell or ship any of such Covered Product into the state of California unless Dukal has complied
28 with all warning requirements set forth in Section 3.3.1.

3.3.1 Covered Product Label.

1 For all Covered Products that do not meet the Phthalate Free concentration standards of
2 Section 2.2, Defendants shall affix a label to the Covered Product or its immediate packaging that
3 states:

4  **WARNING:** This product can expose you to
5 chemicals, including [di(2-ethylhexyl)phthalate
6 (“DEHP”)] [and] [diisononyl phthalate (DINP)],
7 which are known to the State of California to
8 cause [cancer and] birth defects or other
reproductive harm. For more information go to
www.P65Warnings.ca.gov;

9 or

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


12 Dukal shall select the appropriate bracketed language depending upon whether DEHP, DINP or
13 both are present in the product. The label shall be prominently affixed with such conspicuousness
14 as compared with other words, statements, designs, or devices, as to render it likely to be read and
15 understood by an ordinary individual under customary conditions *before* purchase or use.

16 Where a label used to provide a warning under this section includes consumer information
17 in a language other than English, the warning in this section must also be provided in that language
18 in addition to English.


19 **3.3.2 Internet Website Warning.**

20 After the Effective Date, for all Covered Product not confirmed to meet the Phthalate Free
21 concentration standards of Section 2.2, a warning must be given on an e-commerce or other
22 website owned or operated by or for Dukal in conjunction with the advertisement, marketing, sale
23 or offer of sale of any Covered Product into the state of California. A warning will satisfy this
24 requirement if it appears either: (a) on the same web page on which a Covered Product is
25 displayed; (b) on the same web page as the order form for a Covered Product; (c) on the same page
26 as the price for any Covered Product; or (d) on one or more web pages displayed to a purchaser
27 during the checkout process. One of the following warning statements shall be used and shall
28 appear in any of the above instances adjacent to or immediately following the display, description,

1 or price of the Covered Product for which it is given in the same type size or larger than the
2 Covered Product description text:

3  **WARNING:** This product can expose you to
4 chemicals, including [di(2-ethylhexyl)phthalate
5 (“DEHP”)][and][diisononyl phthalate (DINP),]
6 which are known to the State of California to
7 cause [cancer and] birth defects or other
8 reproductive harm. For more information go to
9 www.P65Warnings.ca.gov;

10 or

11  **WARNING:** [Cancer and] Reproductive Harm
12 - www.P65Warnings.ca.gov

13 Dukal shall select the appropriate bracketed language depending upon whether DEHP, DINP or
14 both are present in the product.

15 Where an ecommerce warning used to provide a warning under this section includes
16 consumer information in a language other than English, the warning in this section must also be
17 provided in that language in addition to English.

18 **4. MONETARY PAYMENTS**

19 **4.1 Civil Penalty**

20 As a condition of settlement of all the claims referred to in this Settlement
21 Agreement, Dukal agrees to pay a total of \$4,400 in civil penalties in accordance with California
22 Health & Safety Code § 25249.12(c)(1) & (d).

23 **4.2 Augmentation of Penalty Payments**

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

1 \$10,000.00. Defendant shall also pay reasonable, additional attorney fees expended by Davia in
2 discovering such additional sales and reporting them to Dukal in accordance with this section.

3 **4.3 Reimbursement of Davia’s Fees and Costs**

4 The Parties reached an accord on the reimbursement due to Davia and compensation of her
5 counsel under general contract principles and consistent with the private attorney general doctrine
6 codified at California Code of Civil Procedure section 1021.5. Under these principles, Dukal agrees
7 to reimburse plaintiff the amount of \$65,200 for fees and costs incurred investigating and
8 negotiating a resolution of this matter. This fee and cost settlement amount incorporates and
9 includes all prior monetary sanction Orders of the court and payment of this fee and cost
10 reimbursement amount extinguishes Dukal’s and The Engel Law Group PLLC’s monetary
11 obligations under such Orders. Such payment shall not affect Dukal’s rights as against The Engel
12 Law Group PLLC related to or arising out of its representation of Dukal in this matter. Such
13 payment shall be made payable to “Sheffer Law Firm”.

14 **4.4 Payment Procedures**

15 No later than twenty-one (21) days after execution of this Agreement, Dukal shall deliver all
16 settlement payment funds required by this Agreement to counsel for plaintiff, who shall hold it in
17 Trust until such time as this settlement is approved and judgment entered. Upon Dukal’s counsel’s
18 receipt of notice of entry of judgment, Dukal’s counsel shall deliver the settlement payments to
19 plaintiff’s counsel as follows:

20 a civil penalty check payable to “OEHHHA” (Memo line “Prop 65 Penalties, 2020-03368 and
21 2021-00476”), in the amount of \$3,300;

22 a civil penalty check payable to “Susan Davia” (Memo line “Prop 65 Penalties, 2020-03368
23 and 2021-00476”) in the amount of \$1,100; and

24 an attorney fee and cost reimbursement check payable to “Sheffer Law Firm” (Memo line
25 “2020-03368 and 2021-00476”) in the amount of \$65,200.

26 All Section 4.1 and Section 4.3 civil penalty and attorney fee/cost payments shall be
27 delivered to plaintiff’s counsel at the following address:
28

1 Sheffer Law Firm
2 Attn: Proposition 65 Controller
3 232 E. Blithedale Avenue, Suite 210
4 Mill Valley, CA 94941

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

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

12 Dukul shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts
13 due and owing from it under this Section that are not received by Sheffer Law Firm within two
14 business days of the due date for such payment. This provision shall not be interpreted to allow
15 Davia to double recover for any statutory interest and Davia expressly waives any rights to pre-
16 judgment or post-judgment statutory interest applicable for failure of payment under this Section.

14 **5. RELEASES**

15 **5.1 DAVIA'S RELEASE OF DEFENDANT**

16 5.1.1 Davia, acting on her own behalf and in the public interest releases Dukul from all
17 claims for violations of proposition 65 up through the Effective Date based on exposure to DEHP
18 and DINP from Covered Products as set forth in the Notices of violation. Compliance with the
19 terms of this Agreement constitutes compliance with Proposition 65 with respect to exposures to
20 DEHP and DINP from Covered Products as set forth in the Notices of Violations.

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

26 **5.2 DEFENDANT DUKAL'S RELEASE OF DAVIA**

27 Defendant, on behalf of itself and its agents, representatives, attorneys, successors, and/or
28 assignees, hereby waive any and all claims against Davia and her attorneys and other

1 representatives, for any and all actions taken or statements made (or those that could have been
2 taken or made) by Davia and her attorneys and other representatives arising out of the subject
3 matter of the Notice and the Covered Products, whether in the course of investigating claims in
4 this matter, otherwise seeking to enforce Proposition 65 against Defendant and Releasees in this
5 matter, or negotiating this Agreement. Defendant acknowledges that it is familiar with Section
6 1542 of the California Civil Code, which provides as follows:

7
8 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
9 CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO
10 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE
11 RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE
12 MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE
13 DEBTOR OR RELEASE PARTY.

14 Defendant expressly waives and relinquishes all rights and benefits which it may have
15 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil
16 Code as well as under any other state or federal statute or common law principle of similar effect,
17 to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released
18 matters identified in this Section 5.2. In furtherance of such intention, the release hereby given
19 shall be and remain in effect as a full and complete release notwithstanding the discovery or
20 existence of any such additional or different claims or facts arising out of the released matters.

21 **6. COURT APPROVAL**

22 This Agreement is effective upon execution but must also be approved by the Court. If the
23 Court does not approve this Agreement in its entirety, the Parties shall meet and confer to
24 determine whether to modify the terms of the Agreement and to resubmit it for approval. In
25 meeting and conferring, the Parties agree to negotiate in good faith to reach agreement on any
26 actions reasonably necessary to amend and/or modify this Agreement in order to further the
27 mutual intention of the Parties in entering into this Agreement. The Agreement shall become null
28 and void if, for any reason, it is not approved and entered by the Court, as it is executed, within one

1 year after it has been fully executed by all Parties. The Parties agree that, upon Court approval, a
2 Court judgment shall be entered on the terms of this Agreement.

3 **7. SEVERABILITY**

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

7 **8. GOVERNING LAW**

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

9 **9. NOTICES**

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

12 **For Defendant:**

13
14 Gerry LoDuca, President
15 DUKAL Corporation
16 2 Fleetwood Court
17 Ronkonkoma, NY 11779

18 **For Defendants' Counsel:**

19 Elizabeth V. McNulty
20 Josh Cools, Esq.
21 Evans Fears Schutttert McNulty Mickus
22 Irvine, Ca. 92614
23 emcnulty@efsmmlaw.com
24 jcools@efsmmlaw.com

25 **For Davia:**

26 Proposition 65 Coordinator
27 Sheffer Law Firm
28 232 E. Blithedale Avenue, Suite 210
29 Mill Valley, CA 94941
30 gregs@sheffer-law.net

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

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

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

4 **11. MODIFICATION**

5 This Agreement may be modified only by written agreement of the Parties or Court order.

6 **12. ENTIRE AGREEMENT**

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

17 **13. ATTORNEY FEES**

18 **13.1** In any dispute concerning any matter related to this Agreement, the prevailing Party
19 shall be entitled to recover its costs and expenses, including attorney fees and costs. Except as
20 otherwise specifically provided herein, each Party shall bear its own costs and attorney fees in
21 connection with the Notice. Nothing in this Section shall preclude a Party from seeking an award
22 of sanctions pursuant to law.

23 **14. NEUTRAL CONSTRUCTION**

24 Both Parties and their counsel have participated in the preparation of this Agreement and
25 this Agreement is the result of the joint efforts of the Parties. This Agreement was subject to
26 revision and modification by the Parties and has been accepted and approved as to its final form
27 by each of the Parties. Accordingly, any uncertainty or ambiguity existing in this Agreement shall
28

1 not be interpreted against any Party as a result of the manner of the preparation of this Agreement.
2 Each Party to this Agreement agrees that any statute or rule of construction providing that
3 ambiguities are to be resolved against the drafting Party should not be employed in the
4 interpretation of this Agreement and, in this regard, the Parties hereby waive California Civil Code
5 Section 1654. The Parties further agree that the section headings are for convenience only and
6 shall not affect interpretation of this Agreement.

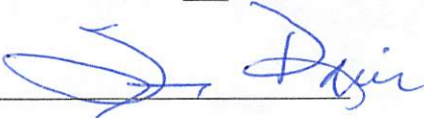
7 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

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

14 **16. AUTHORIZATION**

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

19 **IT IS SO AGREED**

| | |
|--|---|
| <p>21 Dated: March __, 2024</p> <p>22</p> <p>23 _____</p> <p>24 Gerry LoDuca, President 25 DUKAL Corporation</p> | <p>21 Dated: March ²⁶__, 2024</p> <p>22</p> <p>23 </p> <p>24 Susan Davia</p> |
|--|---|

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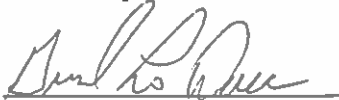
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8 This Agreement may be executed in counterparts and by facsimile or portable document
9 format (PDF), each of which shall be deemed an original, and all of which, when taken together,
10 shall constitute one and the same document. Signatures by scanned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

14 **16. AUTHORIZATION**

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

19 **IT IS SO AGREED**

| | |
|---|--|
| 21 Dated: April 2, 2024 22  23 _____ 24 _ Gerry LoDuca, President 25 DUKAL Corporation | 21 Dated: April __, 2024 22 _____ 23 _____ 24 Susan Davia |
|---|--|

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