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5 Attorneys for Plaintiff  
6 SUSAN DAVIA

7  
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 GALAXY ENTERPRISES, INC., GALAXY  
16 MEDICAL, SCRIP, INC., ALLEGRO MEDICAL  
17 SUPPLIES, INC., ALLEGROMEDICAL.COM  
18 AND DOES 1-150,

19 Defendants.

Case No. CIV2104126

**CONSENT TO JUDGMENT SETTLEMENT  
AGREEMENT**

*(Cal. Health & Safety Code § 25249.6 et seq.)*

Action Filed: December 9, 2021

Trial Date: Not assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and  
4 between noticing party Susan Davia (“Davia”) and noticed parties Galaxy Enterprises, Inc. and  
5 Galaxy Medical (hereafter, collectively, “Galaxy”), with Davia and Galaxy each referred to as a  
6 “Party” and 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 Galaxy**

12 Davia alleges that each Galaxy Enterprises, Inc. and Galaxy Medical is a person in the course  
13 of doing business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986,  
14 California Health & Safety Code §§ 25249.6 *et seq.* (“Proposition 65”). Though Galaxy generally  
15 denies that it is a person in the course of doing business under Proposition 65, for the limited and sole  
16 purpose of this Agreement, Galaxy does not dispute that it qualifies as a person doing business under  
17 Proposition 65.

18 **1.4 General Allegations**

19 Davia alleges that Galaxy is responsible for the design, manufacture, distribution and/or  
20 sale, in the State of California, of Galaxy adjustable stools made with vinyl components that expose  
21 users to diisononyl phthalate (DINP) without first providing “clear and reasonable warning” under  
22 Proposition 65. Pursuant to Proposition 65, DINP is listed as a carcinogen. DINP shall be referred to  
23 hereinafter as the “Listed Chemical.”

24 **1.5 Notice of Violation**

25 On April 16, 2021, Davia served Galaxy and various public enforcement agencies with a  
26 document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed  
27 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn  
28

1 consumers of the presence of DINP found in vinyl-covered adjustable stool Covered Products  
2 (hereafter defined) sold in California (AG Notice 2021-00882). On April 23, 2021, Davia also served  
3 Galaxy and various public enforcement agencies with a document entitled “Amended 60-Day  
4 Notice of Violation” that provided public enforcers and the noticed entities with notice of alleged  
5 violations of Health & Safety Code § 25249.6 for failing to warn consumers of the presence of DINP  
6 found in vinyl-covered adjustable stool Covered Products (hereafter defined) sold in California (AG  
7 Notice 2021-00921). The Amended 60-Day Notice of Violation was only amended to clarify Davia  
8 was not making allegations of occupational exposure as a Supplemental Enforcer under Health and  
9 Safety Code § 25249.7(d) and was only making allegations of consumer exposures that happened  
10 occur in both private and occupational settings.

11 This April 16, 2021, and April 23, 2021, Notices of Violation shall hereafter be collectively  
12 referred to as “Notice.” Galaxy represents that, as of the date it executes this Agreement, it is not  
13 aware of any public enforcer that is diligently prosecuting a Proposition 65 enforcement action  
14 related to DINP in the Covered Products, as identified in the Notice.

15 **1.6 Complaint**

16 On December 9, 2021, Davia filed a Complaint in the Superior Court of the State of California  
17 for the County of Marin, Case No. CIV2104126, alleging violations by Galaxy Enterprises, Inc.,  
18 Galaxy Medical, Scrip, Inc., Allegro Medical Supplies, Inc. and allegromedical.com of Health and  
19 Safety Code § 25249.6 based on the alleged exposures to the Listed Chemical in the Covered  
20 Products (the “Action”).

21 **1.7 No Admission**

22 This Agreement resolves claims that are denied and disputed by Galaxy. The Parties enter  
23 into this Agreement pursuant to a full and final settlement of any and all claims between the Parties  
24 for the purpose of avoiding prolonged litigation. Galaxy denies the material factual and legal  
25 allegations contained in the Notice, maintains that it did not knowingly or intentionally expose  
26 California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered  
27 Products and otherwise contends that, all Covered Products it has manufactured, distributed and/or  
28 sold in California have been and are in compliance with all applicable laws and regulations,

1 including Proposition 65. Nothing in this Agreement shall be construed as an admission by Galaxy  
2 of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement  
3 constitute or be construed as an admission by Galaxy of any fact, finding, conclusion, issue of law, or  
4 violation of law, such being specifically denied by Galaxy. However, notwithstanding the  
5 foregoing, this section shall not diminish or otherwise affect Galaxy's obligations, responsibilities,  
6 and duties under this Agreement.

7 **1.8 Consent to Jurisdiction**

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

12 **2. DEFINITIONS**

13 **2.1** "Covered Product" shall mean all Galaxy adjustable round stools with vinyl covering  
14 containing DINP, including, but not limited to, Galaxy Stools 1125, 1135, 1145, 1150, 1151, 1060-G,  
15 1070-G and 1080-G.

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

22 **2.3** "California Customer(s)" shall mean any customer or Covered Product recipient with  
23 a ship to or billing address in California or any national retail customer who Galaxy reasonably  
24 understands to have a retail outlet in California or sells to customers located in California.

25 **2.4** "Effective Date" shall mean January 10, 2023.

26 **3. INJUNCTIVE RELIEF**

27 **3.1 Products No Longer in Galaxy's Control**

1           Within 15 days of the Effective Date, Galaxy shall send a letter, electronic or otherwise  
2 (“Notification Letter”) to the national or California purchasing manager for any retail entity to which  
3 Galaxy has sold Covered Products since April 1, 2019, and that Galaxy reasonably understands  
4 either maintains an ecommerce retail website or maintains retail outlets in California. The  
5 Notification Letter shall advise the recipient that Covered Products “have been tested for the  
6 presence of phthalates and found to contain DINP, a chemical known to the State of California to  
7 cause cancer,” and request that the recipient either pull all Covered Products from store displays  
8 and return its entire inventory of Covered Products to Galaxy or label the Covered Products  
9 remaining in inventory for sale in California with a label that complies with Section 3.3. The  
10 Notification Letter shall request a response from the recipient within 15 days, confirming that the  
11 letter was received. Galaxy shall maintain records of all correspondence or other communications  
12 generated pursuant to this Section for two years after the Effective Date and shall promptly produce  
13 copies of such records upon Davia’s written request, which request shall not be made more than one  
14 time per calendar year.

15           **3.2     Product Reformulation Commitment**

16           **3.2.1** No later than the Effective Date, Galaxy shall provide the Phthalate Free  
17 concentration standards of Section 2.2 to its then-current vendors or manufacturers of any Covered  
18 Product and to its vendors of any vinyl material for any Covered Product, and request such entities  
19 not to incorporate any raw or component materials that do not meet the Phthalate Free  
20 concentration standards of Section 2.2 into any Covered Product or to supply any Covered Product  
21 to Galaxy that is not Phthalate Free. Galaxy shall maintain copies of all vendor correspondence  
22 relating to the Phthalate Free concentration standards for two (2) years after the Effective Date and  
23 shall produce such copies to Davia within thirty (30) days of receipt of written request from Davia,  
24 which request shall not be made more than one time per calendar year. After the Effective Date,  
25 Galaxy shall provide the Phthalate Free concentration standards of Section 2.2 to any New Vendor of  
26 any Covered Product and request such entities not to incorporate any raw or component materials  
27 that do not meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product.  
28


1 “New Vendor” means any vendor of any Covered Product from whom Galaxy was not obtaining  
2 Covered Product as of the Effective Date. Prior to purchase and acquisition of any Covered Product  
3 or any vinyl component for any Covered Product from any new vendor, Galaxy shall obtain a  
4 written confirmation and/or laboratory test result from the new vendor demonstrating compliance  
5 with the Phthalate Free concentration standard in all materials comprising the Covered Product. For  
6 every Covered Product Galaxy manufactures, causes to be manufactured, orders, causes to be  
7 ordered or otherwise obtains from a new vendor after the Effective Date, Galaxy shall maintain  
8 copies of all testing of such products demonstrating compliance with this section, shall maintain  
9 copies of all vendor correspondence relating to the Phthalate Free concentration standards for two  
10 (2) years from the Effective Date and shall produce such copies to Davia within thirty (30) business  
11 days of receipt of written request from Davia, which request shall not be made more than one time  
12 per calendar year.

### 13 3.3 Covered Product Warnings

14 3.3.1 For any Covered Product that is not confirmed to be Phthalate Free, Galaxy shall not  
15 distribute, sell or ship, or cause to be distributed, sold or shipped, any such Covered Product to a  
16 California Customer unless such Covered Product is shipped with product package label as set forth  
17 hereafter.


18 Each such warning utilized by Galaxy for any Covered Product shall be prominently placed  
19 either on the product, its labeling or its packaging with such conspicuousness as compared with  
20 other words, statements, designs, or devices as to render it likely to be read and understood by an  
21 ordinary individual under customary conditions *before* purchase or use. Davia agrees that Galaxy  
22 may place the warning on the bottom side of the seat portion of Covered Product next to the other  
23 warnings on the Covered Product.

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

27  **WARNING:** The vinyl materials of this product can  
28 expose you to chemicals, including DINP, that are


1 known to the State of California to cause cancer. For  
2 more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

3 or


4  **WARNING:** Cancer and Reproductive Harm. -  
5 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

### 6 **3.4 Internet Ecommerce Covered Product Warnings**

7 After the Effective Date, a warning must be given on an ecommerce or other website owned  
8 or operated by or for Galaxy in conjunction with the advertisement, marketing, sale, or offer of sale,  
9 by Galaxy of any Covered Product not confirmed by Galaxy to be Phthalate Free via any ecommerce  
10 website owned, operated, managed or controlled by Galaxy. A warning will satisfy this  
11 requirement if it appears either: (a) on the same web page on which a Covered Product is displayed;  
12 (b) on the same web page as the order form for a Covered Product; (c) on the same page as the price  
13 for any Covered Product; or (d) on one or more web pages displayed to a purchaser during the  
14 checkout process. One of the following warning statements shall be used and shall appear in any of  
15 the above instances adjacent to or immediately following the display, description, or price of the  
16 Covered Product for which it is given, or through a hyperlink using the word "WARNING", in the  
17 same type size or larger than the Covered Product description text:           

18  **WARNING:** This product can expose you to chemicals  
19 known to the State of California to cause cancer. For  
20 more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

21 Alternatively, the following "short form" warning may be used on the ecommerce website,  
22 but only if the same warning language also appears on the product label or consumer packaging of  
23 the Covered Product itself.

24  **WARNING:** Cancer and Reproductive Harm -  
25 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

## 26 **4. MONETARY PAYMENTS**

### 27 **4.1 Civil Penalty**

28 As a condition of settlement of all the claims referred to in this Agreement, Galaxy shall pay  
a total of \$2,400 in civil penalties in accordance with California Health & Safety Code §

1 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental  
2 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Davia.

3 **4.2 Augmentation of Penalty Payments**

4 For purposes of the penalty assessment under this Agreement, Davia is relying entirely  
5 upon Galaxy for accurate, good faith reporting to Davia of the nature and amounts of relevant sales  
6 activity. If within nine (9) months of the Effective Date, Davia discovers and presents competent  
7 and credible evidence to counsel for Galaxy that the Covered Products have been sold to retailers or  
8 California consumers by Galaxy in sales volumes materially different (more than 25%) than those  
9 identified by Galaxy prior to execution of this Judgment, and Galaxy does not provide Davia with  
10 competent and credible evidence to dispute this claim, then Galaxy shall be liable for an additional  
11 penalty amount of \$10,000.00. Davia agrees to provide counsel for Galaxy with a written demand  
12 for all such additional penalties and attorney fees under this Section. After service of such demand,  
13 Galaxy shall have thirty (30) days to either present evidence to counter this claim or to agree to the  
14 amount of fees and penalties owing by Galaxy and submit such payment to Davia in accordance  
15 with the method of payment of penalties and fees identified in Section 4.1 and 4.4. Should this  
16 thirty (30) day period pass without any such resolution between the parties and payment of such  
17 additional penalties and fees, Davia shall be entitled to file a formal legal claim for the additional  
18 civil penalties pursuant to this Section and the prevailing party to such action shall be entitled to all  
19 reasonable attorney fees and costs relating to such claim.

20 **4.3 Reimbursement of Davia’s Fees and Costs**

21 The Parties acknowledge that Davia and her counsel refused to consider any reimbursement of  
22 plaintiff’s fees and costs until all other terms of the settlement were reached. The Parties then  
23 attempted to (and did) reach an accord on the reimbursement due to Davia and her counsel under  
24 general contract principles and the private attorney general doctrine codified at California Code of  
25 Civil Procedure section 1021.5. Under these principles, Galaxy shall reimburse Davia’s counsel the  
26 amount of \$36,300 for fees and costs incurred investigating, and enforcing this matter. Such  
27 payment shall be made payable to “Sheffer Law Firm.”



1           **4.4     Payment Procedures**

2           Galaxy shall make payments on the following schedule:

3           By no later than February 1, 2023, Galaxy shall deliver a civil penalty check, payable to  
4 “OEHHA” (Memo line “Prop 65 Penalties, 2021-00882, 2021-00921”), in the amount of \$1,800, a civil  
5 penalty check payable to “Susan Davia” (Memo line “Prop 65 Penalties, 2021-00882, 2021-00921”) in  
6 the amount of \$600, a *partial* attorney fee and cost reimbursement check payable to “Sheffer Law  
7 Firm” (Memo line “2021-00882, 2021-00921”) in the amount of \$10,500;

8           By no later than May 1, 2023, Galaxy shall deliver a *partial* attorney fee and cost  
9 reimbursement check payable to “Sheffer Law Firm” (Memo line “2021-00882, 2021-00921”) in the  
10 amount of \$12,900;

11           By no later than August 1, 2023, Galaxy shall deliver the final, *partial* attorney fee and cost  
12 reimbursement check payable to “Sheffer Law Firm” (Memo line “2021-00882, 2021-00921”) in the  
13 amount of \$12,900.

14           All above-referenced civil penalty and attorney fee/cost payments shall be delivered to  
15 plaintiff’s counsel at the following address:

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

20           If Sheffer Law Firm receives delivery of any settlement checks from Galaxy before the settlement is  
21 approved by the court, it shall hold those checks, without deposit, until the time of such court  
22 approval. If this Agreement becomes null and void for any reason prior to court approval, then  
23 Sheffer Law Firm shall return all checks to Galaxy at the address listed in Section 10.

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

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

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

4 While the obligations of this agreement are binding upon execution, the Release of Galaxy  
5 shall not become effective until after all monetary payments have been made by Galaxy and all  
6 funds have cleared.

#### 7 **4.5 Issuance of 1099 Forms**

8 After this Agreement has been executed and the settlement funds have been transmitted to  
9 Davia's counsel, Galaxy shall issue three separate 1099 forms, as follows:

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

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

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

### 16 **5. RELEASES**

#### 17 **5.1 DAVIA'S RELEASE OF GALAXY**

18 5.1.1 This Agreement constitutes a full, final and binding resolution by Davia,  
19 individually and on behalf of herself and in the public interest, her past and current representatives,  
20 agents, attorneys, successors and/or assigns ("Releasers") against Galaxy, and its directors, officers,  
21 shareholders employees, attorneys, agents, parent companies, subsidiaries, divisions, suppliers,  
22 customers and all other downstream entities in the distribution chain of any Covered Product, and  
23 the predecessors, successors, and assigns of any of them (collectively "Releasees") in the public  
24 interest of any violation of Proposition 65 that has been or could have been asserted in the public  
25 interest against the Releasees arising out of exposures to the Covered Products. Except as otherwise  
26 provided herein, the Releasers hereby fully release and discharge the Released Parties from any and  
27 all claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and  
28 expenses asserted, or that could have been asserted from the sale of the Covered Products up to the

1 Effective Date (collectively, the “Released Claims”.) Further, Plaintiff acting on her own behalf and  
2 in the public interest releases Releasees, and all retail entities to which Galaxy distributed the  
3 Covered Products, from all claims for violations of Proposition 65 up through the Effective Date  
4 based on exposure to DINP from Covered Products as set forth in the Notice of Violation.  
5 Compliance with the terms of this Agreement constitutes compliance with Proposition 65 by Galaxy  
6 with regard to the alleged failure to warn about exposure to DINP from Covered Products  
7 manufactured, sold or distributed for sale after the Effective Date.

8  
9 5.1.2 Davia also, in her individual capacity and on behalf of her past and current  
10 representatives, agents, attorneys, successors and/or assigns, provides a general release and  
11 waiver which shall be effective as a full and final accord and satisfaction, and as a bar to all claims,  
12 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
13 liabilities and demands of Davia, of any nature, character or kind, known or unknown, suspected or  
14 unsuspected, arising out of the subject matter of the Notice and the Covered Products to the extent  
15 sold or distributed by Galaxy or Releasees before the Effective Date, and for all actions taken and  
16 the statements made (or that could have been taken or made) by Galaxy or its attorneys and other  
17 representatives in connection with negotiating this Judgment. Davia acknowledges that she is  
18 familiar with section 1542 of the California civil code, which provides as follows:

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

23 Davia, in her individual capacity and on behalf of her past and current representatives,  
24 agents, attorneys, successors and/or assigns expressly waives and relinquishes any and all rights  
25 and benefits that she may have under, or which may be conferred on her by the provisions of  
26 Section 1542 of the California Civil Code as well as under any other state or federal statute or  
27 common law principle of similar effect, to the fullest extent that she may lawfully waive such rights  
28 or benefits pertaining to the released matters. In furtherance of such intention, excepting Section

1 4.2, the release hereby given shall be and remain in effect as a full and complete release  
2 notwithstanding the discovery or existence of any such additional or different claims or facts arising  
3 out of the released matters.

4 5.1.3 This section 5.1 release shall not extend upstream to any entities, other than Galaxy,  
5 that manufactured the Covered Products or any component parts thereof, or any distributors or  
6 suppliers who sold the covered products or any component parts thereof to Galaxy.

7 **5.2 Galaxy's Release of Davia**

8 The Release by Davia is mutual. Galaxy, each on behalf of itself, its past and current agents,  
9 representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against  
10 Davia and her attorneys and other representatives, for any and all actions taken or statements made  
11 (or those that could have been taken or made) by Davia and her attorneys and other representatives  
12 arising out of the subject matter of the notice and the Covered Products, whether in the course of  
13 investigating claims, otherwise seeking to enforce Proposition 65 against Defendants and Releasees  
14 in this matter or negotiating this Judgment. Galaxy acknowledges that it is familiar with Section  
15 1542 of the California Civil Code, which provides as follows:

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

22 Galaxy expressly waives and relinquishes any and all rights and benefits which it may have  
23 under, or which may be conferred on it by the provisions of Section 1542 of the California Civil  
24 Code as well as under any other state or federal statute or common law principle of similar effect, to  
25 the fullest extent that he may lawfully waive such rights or benefits pertaining to the released  
26 matters. In furtherance of such intention, the release hereby given shall be and remain in effect as a  
27 full and complete release notwithstanding the discovery or existence of any such additional or  
28 different claims or facts arising out of the released matters. This Section 5 release shall not release  
any obligations created by or set forth in this Judgment.

1     **6.     COURT APPROVAL**

2             This Agreement is effective upon execution but must also be approved by the Court. If the  
3 Court does not approve this Agreement in its entirety, the Parties shall meet and confer to  
4 determine whether to modify the terms of the Agreement and to resubmit it for approval. In  
5 meeting and conferring, the Parties agree to negotiate in good faith in an effort to reach agreement  
6 on any actions reasonably necessary to amend and/or modify this Agreement in order to further  
7 the mutual intention of the Parties in entering into this Agreement. The Agreement shall become  
8 null and void if, for any reason, it is not approved and entered by the Court, as it is executed, within  
9 one year after it has been fully executed by all Parties. The Parties agree that, once *both* Court  
10 approval and full payment by Galaxy of all Section 4.1 and Section 4.3 payments have been  
11 achieved a Court judgment shall be entered on the terms of this Agreement. Should court approval  
12 occur before full payment of Section 4.1 and Section 4.3 payments, then the court shall retain  
13 jurisdiction pursuant to C.C.P. Section 664.6 until no earlier than August 15, 2022 and, only if all  
14 payments are timely made by August 1, 2023, the court shall enter judgment on the terms of this  
15 Agreement.

16     **7.     ENFORCEMENT**

17             Prior to bringing any motion, order to show cause, or other proceeding to enforce  
18 Proposition 65 or any terms of this agreement relating to the alleged sale in California of any  
19 Covered Product without a warning and which is alleged to not be Phthalate Free, in actual or  
20 alleged violation of this agreement, any citizen enforcer, including Davia, shall provide a Notice of  
21 Violation (“NOV”) to Galaxy. The NOV shall include, for each Covered Product alleged to be  
22 violation of this agreement: the date of alleged violations(s), place of sale, date and proof of  
23 purchase (if relevant), and test data obtained by the citizen enforcer regarding each such Covered  
24 Product. Such citizen enforcer shall take no further action regarding any alleged violation nor seek  
25 any monetary recovery for the enforcer or the enforcer’s counsel if, within thirty (30) days of  
26 receiving such NOV, Galaxy demonstrates (1) that such Covered Product was manufactured  
27 distributed, sold or offered for sale by Galaxy before the Effective Date, (2) that Galaxy directed the  
28 retailer or distributor of the Covered Product to take corrective action by placing an appropriate

1 warning on the covered product(s) compliant with section 3.3 of this agreement following service of  
2 the NOV, or (3) that the Covered Product is, in fact, Phthalate Free

3 **8. SEVERABILITY**

4 If any of the provisions of this Agreement are found by a court to be unenforceable, the  
5 validity of provisions remaining, upon express consent of the Parties, shall not be affected and shall  
6 remain in full force and effect, unless the Court finds that any unenforceable provision is not  
7 severable from the remainder of the Agreement.

8 **9. GOVERNING LAW**

9 The terms of this Agreement shall be governed by the laws of the State of California.  
10 Compliance with it shall be deemed compliance with Proposition 65 and its implementing  
11 regulations with respect to the Phthalates identified in 2.2 in the Covered Products.

12 **10. NOTICES**

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

15  
16 For Galaxy:

17 Henry Talei, CEO  
18 Galaxy Enterprises, Inc.  
19 Galaxy Medical  
5411 Sheila Street  
Los Angeles, CA 90040

20  
21 With a copy to its counsel:

22 Mahrad Enayati, Esq.  
23 The Law Office of Mahrad Enayati  
5482 Wilshire Blvd.,  
Suite 1582  
24 Los Angeles, CA 90036  
mahrad@enayatilaw.com

25  
26 For Davia to:

27 Proposition 65 Coordinator  
28 Sheffer Law Firm  
232 E. Blithedale Ave., Suite 210

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Mill Valley, CA 94941  
gregs@sheffer-law.net

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

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

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

**12. MODIFICATION**

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

**13. ENTIRE AGREEMENT**

This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, and understandings related hereto. No representations, oral or otherwise, express or implied, other than those contained herein have been made by any Party hereto. No other 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.

**14. ATTORNEY'S FEES**

**14.1** In any dispute concerning any matter related to this Agreement, the prevailing party shall be entitled to recover its costs and expenses, including reasonable attorney fees and costs.

**14.2** Except as otherwise specifically provided herein, each Party shall bear its own costs and attorney's fees in connection with the Notice.

**14.3** Nothing in this Section shall preclude a Party from seeking an award of sanctions pursuant to law.

1 **15. NEUTRAL CONSTRUCTION**

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

12 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

13 This Agreement may be executed in counterparts and by facsimile or portable document  
14 format (PDF), each of which shall be deemed an original, and all of which, when taken together,  
15 shall constitute one and the same document. Signatures by scanned and emailed image or facsimile  
16 transmission shall have the same force and effect as original signatures and as an electronic record  
17 executed and adopted by a Party with the intent to sign the electronic record pursuant to Civil Code  
18 section 1633.1 et. seq.

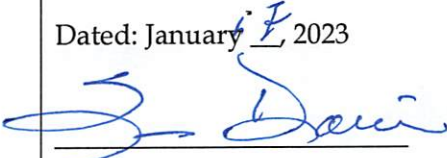
19 **17. AUTHORIZATION**

20 Each of the persons signing this Judgment represents and warrants that he or she is  
21 authorized and has the capacity to execute this Agreement on behalf of their respective Parties and  
22 have read, understood, and agree to all of the terms and conditions of this Agreement.

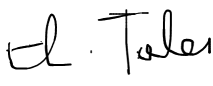
23 **IT IS SO AGREED**  
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<p>Dated: January __, 2023</p> <hr/> <p>Henry Talei, CEO Galaxy Enterprises, Inc. Galaxy Medical</p>	<p>Dated: January <u>17</u>, 2023</p>  <hr/> <p>Susan Davia</p>
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<p>Dated: January 16, 2023</p> <p></p> <hr/> <p>Henry Talei, CEO Galaxy Enterprises, Inc. Galaxy Medical</p>	<p>Dated: January __, 2023</p> <hr/> <p>Susan Davia</p>
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