

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

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 April 26, 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. For the exclusive purposes of this Section only, Davia agrees that Galaxy  
15 may redact retail entity names, telephone numbers, street addresses and any other proprietary  
16 information that may reveal the identity of Galaxy’s vendors from any correspondences shared with  
17 Davia pursuant to this Section 3.1.

18           **3.2 Product Reformulation Commitment**

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

1 Galaxy shall provide the Phthalate Free concentration standards of Section 2.2 to any New Vendor of  
2 any Covered Product and request such entities not to incorporate any raw or component materials  
3 that do not meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product.  
4 “New Vendor” means any vendor of any Covered Product from whom Galaxy was not obtaining  
5 Covered Product as of the Effective Date. Prior to purchase and acquisition of any Covered Product  
6 or any vinyl component for any Covered Product from any new vendor, Galaxy shall obtain a  
7 written confirmation and/or laboratory test result from the new vendor demonstrating compliance  
8 with the Phthalate Free concentration standard in all materials comprising the Covered Product. For  
9 every Covered Product Galaxy manufactures, causes to be manufactured, orders, causes to be  
10 ordered or otherwise obtains from a new vendor after the Effective Date, Galaxy shall maintain  
11 copies of all testing of such products demonstrating compliance with this section, shall maintain  
12 copies of all vendor correspondence relating to the Phthalate Free concentration standards for two  
13 (2) years from the Effective Date and shall produce such copies to Davia within thirty (30) business  
14 days of receipt of written request from Davia, which request shall not be made more than one time  
15 per calendar year. For the exclusive purposes of this section only, Davia agrees that Galaxy may  
16 redact vendor names, telephone numbers, street addresses, and any other proprietary information  
17 that may reveal the identity of Galaxy’s vendors from any correspondences shared with Davia  
18 pursuant to this Section 3.2.1.


19 **3.3 Covered Product Warnings**

20 **3.3.1** For any Covered Product that is not confirmed to be Phthalate Free, and that contains  
21 DINP in a concentration in excess of 1,000 ppm, Galaxy shall not distribute, sell or ship, or cause to  
22 be distributed, sold or shipped, any such Covered Product to a California Customer unless such  
23 Covered Product is shipped with product package label as set forth hereafter.


24 Each such warning utilized by Galaxy for any Covered Product shall be prominently placed  
25 either on the product, its labeling or its packaging with such conspicuousness as compared with  
26 other words, statements, designs, or devices as to render it likely to be read and understood by an  
27 ordinary individual under customary conditions *before* purchase or use. Davia agrees that Galaxy  
28

1 may place the warning on the bottom side of the seat portion of Covered Product next to the other  
2 warnings on the Covered Product.

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


6  **WARNING:** The vinyl materials of this product can  
7 expose you to chemicals, including DINP, that are  
8 known to the State of California to cause cancer. For  
9 more information go to [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

10 or

11  **WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov)

### 12 **3.4 Internet Ecommerce Covered Product Warnings**

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

24  **WARNING:** This product can expose you to  
25 chemicals, including DINP, known to the State of  
26 California to cause cancer. For more information go to  
27 [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

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

4                           **⚠WARNING:** Cancer - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

5           **4.       MONETARY PAYMENTS**

6                   **4.1     Civil Penalty**

7           As a condition of settlement of all the claims referred to in this Agreement, Galaxy shall pay  
8 a total of \$2,400 in civil penalties in accordance with California Health & Safety Code §  
9 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental  
10 Health Hazard Assessment (“OEHHA”) and the remaining 25% of the penalty remitted to Davia.

11                   **4.2     Augmentation of Penalty Payments**

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



1           **4.3     Reimbursement of Davia’s Fees and Costs**

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

9           **4.4     Payment Procedures**

10          Galaxy shall make payments on the following schedule:

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

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

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

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

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

28     If Sheffer Law Firm receives delivery of any settlement checks from Galaxy before the settlement is  
approved by the court, it shall hold those checks, without deposit, until the time of such court

1 approval. If this Agreement becomes null and void for any reason prior to court approval, then  
2 Sheffer Law Firm shall return all checks to Galaxy at the address listed in Section 10.

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

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

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

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

#### 16 **4.5 Issuance of 1099 Forms**

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

- 19 (a) issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010,  
20 Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Sections 4.1 and 4.2;  
21 (b) issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2, whose address and tax  
22 identification number shall be furnished upon request; and  
23 (c) issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section 4.2  
24 and 4.3.

### 25 **5. RELEASES**

#### 26 **5.1 DAVIA'S RELEASE OF GALAXY**

27 5.1.1 This Agreement constitutes a full, final and binding resolution by Davia,  
28 individually and on behalf of herself and in the public interest, her past and current representatives,  
agents, attorneys, successors and/or assigns ("Releasers") against Galaxy, and its directors, officers,

1 shareholders employees, attorneys, agents, parent companies, subsidiaries, divisions, suppliers,  
2 customers and all other downstream entities in the distribution chain of any Covered Product, and  
3 the predecessors, successors, and assigns of any of them (collectively "Releasees") in the public  
4 interest of any violation of Proposition 65 that has been or could have been asserted in the public  
5 interest against the Releasees arising out of exposures to DINP in the Covered Products through the  
6 Effective Date. Except as otherwise provided herein, Davia, individually and on behalf of her past  
7 and current representatives, agents, attorneys, successors and/or assigns hereby fully release and  
8 discharge the Released Parties from any and all claims, actions, causes of action, suits, demands,  
9 liabilities, damages, penalties, fees, costs, and expenses asserted, or that could have been asserted  
10 from the sale of the Covered Products up to the Effective Date (collectively, the "Released Claims".)  
11 Further, Plaintiff acting on her own behalf and in the public interest releases Releasees, and all retail  
12 entities to which Galaxy distributed the Covered Products, from all claims for violations of  
13 Proposition 65 up through the Effective Date based on exposure to DINP from Covered Products as  
14 set forth in the Notice of Violation. Compliance with the terms of this Agreement constitutes  
15 compliance with Proposition 65 by Galaxy with regard to the alleged failure to warn about  
16 exposure to DINP from Covered Products manufactured, sold or distributed for sale after the  
17 Effective Date.

18  
19 5.1.2 Davia also, in her individual capacity and on behalf of her past and current  
20 representatives, agents, attorneys, successors and/or assigns, provides a general release and  
21 waiver which shall be effective as a full and final accord and satisfaction, and as a bar to all claims,  
22 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,  
23 liabilities and demands of Davia, of any nature, character or kind, known or unknown, suspected or  
24 unsuspected, arising out of the subject matter of the Notice and the Covered Products to the extent  
25 sold or distributed by Galaxy or Releasees before the Effective Date, and for all actions taken and  
26 the statements made (or that could have been taken or made) by Galaxy or its attorneys and other  
27 representatives in connection with negotiating this Judgment. Davia acknowledges that she is  
28 familiar with section 1542 of the California civil code, which provides as follows:

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

7 Davia, in her individual capacity and on behalf of her past and current representatives,  
8 agents, attorneys, successors and/or assigns expressly waives and relinquishes any and all rights  
9 and benefits that she may have under, or which may be conferred on her by the provisions of  
10 Section 1542 of the California Civil Code as well as under any other state or federal statute or  
11 common law principle of similar effect, to the fullest extent that she may lawfully waive such rights  
12 or benefits pertaining to the released matters. In furtherance of such intention, excepting Section  
13 4.2, the release hereby given shall be and remain in effect as a full and complete release  
14 notwithstanding the discovery or existence of any such additional or different claims or facts arising  
15 out of the released matters.

16 5.1.3 This section 5.1 release shall not extend upstream to any entities, other than Galaxy,  
17 that manufactured the Covered Products or any component parts thereof, or any distributors or  
18 suppliers who sold the covered products or any component parts thereof to Galaxy.

## 19 **5.2 Galaxy's Release of Davia**

20 The Release by Davia is mutual. Galaxy, each on behalf of itself, its past and current agents,  
21 representatives, attorneys, successors, and/or assignees, hereby waives any and all claims against  
22 Davia and her attorneys and other representatives, for any and all actions taken or statements made  
23 (or those that could have been taken or made) by Davia and her attorneys and other representatives  
24 arising out of the subject matter of the notice and the Covered Products, whether in the course of  
25 investigating claims, otherwise seeking to enforce Proposition 65 against Defendants and Releasees  
26 in this matter or negotiating this Judgment. Galaxy acknowledges that it is familiar with Section  
27 1542 of the California Civil Code, which provides as follows:

28 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

1 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH  
2 THE DEBTOR OR RELEASING PARTY.

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

11 **6. COURT APPROVAL**

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

26 **7. ENFORCEMENT**

27 Prior to bringing any motion, order to show cause, or other proceeding to enforce  
28 Proposition 65 or any terms of this agreement relating to the alleged sale in California of any

1 Covered Product without a warning and which is alleged to not be Phthalate Free, in actual or  
2 alleged violation of this agreement, any citizen enforcer, including Davia, shall provide a Notice of  
3 Violation (“NOV”) to Galaxy. The NOV shall include, for each Covered Product alleged to be  
4 violation of this agreement: the date of alleged violations(s), place of sale, date and proof of  
5 purchase (if relevant), and test data obtained by the citizen enforcer regarding each such Covered  
6 Product. Such citizen enforcer shall take no further action regarding any alleged violation nor seek  
7 any monetary recovery for the enforcer or the enforcer’s counsel if, within thirty (30) days of  
8 receiving such NOV, Galaxy demonstrates (1) that such Covered Product was manufactured  
9 distributed, sold or offered for sale by Galaxy before the Effective Date, (2) that Galaxy directed the  
10 retailer or distributor of the Covered Product to take corrective action by placing an appropriate  
11 warning on the covered product(s) compliant with section 3.3 of this agreement following service of  
12 the NOV, or (3) that the Covered Product is, in fact, Phthalate Free

13 **8. SEVERABILITY**

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

18 **9. GOVERNING LAW**

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

22 **10. NOTICES**

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

25 For Galaxy:

26 Henry Talei, CEO  
27 Galaxy Enterprises, Inc.  
28 Galaxy Medical

1 5411 Sheila Street  
2 Los Angeles, CA 90040

3 With a copy to its counsel:

4 Mahrads Enayati, Esq.  
5 The Law Office of Mahrads Enayati  
6 5482 Wilshire Blvd.,  
7 Suite 1582  
8 Los Angeles, CA 90036  
9 mahrads@enayatilaw.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 each  
17 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 of California Health & Safety  
20 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

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

3 **14. ATTORNEY'S FEES**

4 **14.1** In any dispute concerning any matter related to this Agreement, the prevailing party  
5 shall be entitled to recover its costs and expenses, including reasonable attorney fees and costs.

6 **14.2** Except as otherwise specifically provided herein, each Party shall bear its own costs  
7 and attorney's fees in connection with the Notice.

8 **14.3** Nothing in this Section shall preclude a Party from seeking an award of sanctions  
9 pursuant to law.

10 **15. NEUTRAL CONSTRUCTION**

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

21 **16. COUNTERPARTS, FACSIMILE SIGNATURES**

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

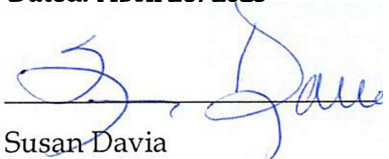
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1 **17. AUTHORIZATION**

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

5 **IT IS SO AGREED**

<p>7 Dated: April <u>27</u>, 2023</p> <p>8 <u>henry talei</u> <small>henry talei (Apr 26, 2023 15:37 PDT)</small></p> <p>9 _____</p> <p>10 Henry Talei, CEO 11 Galaxy Enterprises, Inc. 12 Galaxy Medical</p>	<p>7 Dated: April 28, 2023</p> <p>8 </p> <p>9 _____</p> <p>10 Susan Davia</p>
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