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4 Attorneys for Plaintiff
5 SUSAN DAVIA

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

10
11 SUSAN DAVIA,
12 Plaintiff,
13 v.
14 DRIVE MEDICAL, INC., DRIVE DEVILBISS
HEALTHCARE, INC., MEDICAL DEPOT,
15 INC. and DOES 1-150,
16 Defendants.

Case No. CIV2002748

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

Action Filed: October 30, 2020
Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This settlement agreement (“Agreement” or “Settlement Agreement”) is entered into by and
4 between Susan Davia (“Davia”), as a private enforcer and in the public interest, on the one hand,
5 and Medical Depot, Inc. d/b/a Drive DeVilbiss Healthcare (Collectively, “Drive” or “Defendant”),
6 on the other hand. Davia and Drive are 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 Medical Depot, Inc. d/b/a Drive DeVilbiss**

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

15 **1.4 General Allegations**

16 Davia alleges that Drive participated in the manufacture, distribution, and/or sale, in the
17 State of California, of medical home health products manufactured with vinyl coatings or
18 components that exposed users to di(2-ethylhexyl)phthalate (“DEHP”), di-n-butyl phthalate
19 (“DBP”), diisononyl phthalate (“DINP”), and di-isodecyl phthalate (“DIDP”) without first
20 providing a “clear and reasonable warning” under Proposition 65. DEHP, DBP, and DIP are each
21 listed as a reproductive toxin pursuant to Proposition 65, and DINP is listed as a carcinogen
22 pursuant to Proposition 65. DEHP, DBP, DINP, and DIDP shall be referred to collectively as the
23 “Listed Chemicals.”

24 **1.5 Notices of Violation**

25 On July 10, 2020, Davia served Drive 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 purportedly failing
28 to warn consumers of the presence of the DINP and DIDP found in Drive medical home health

1 products including, but not limited to, “Drive Medical Vinyl Mesh Bather Pouch, Item 10267-1, 8
2 22383 23206 5” sold in California (AG Notice 2020-01681, hereafter “Notice 1”).

3 On January 29, 2021, Davia served Drive and various public enforcement agencies with a
4 document entitled “Supplemental 60-Day Notice of Violation” that provided public enforcers and
5 the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6 for
6 purportedly failing to warn consumers of the presence of DEHP and DBP in Drive medical home
7 health products with vinyl components including, but not limited to, “Drive Oxygen Cylinder
8 Shoulder Bag, Item 18102 (822383104263)” and “Drive Cervical Traction Set, Item #13004
9 (822383102986)” sold in California (AG Notice 2021-00182, hereafter “Notice 2”).

10 On June 25, 2021, Davia served Drive and various public enforcement agencies with a
11 document entitled “Second Supplemental 60-Day Notice of Violation” that provided public
12 enforcers and the noticed entities with notice of alleged violations of Health & Safety Code § 25249.6
13 for purportedly failing to warn consumers of the presence of DEHP in Drive health products with
14 vinyl components, including, but not limited to, “Drive Revolving Adjustable Height Stools,
15 including product 13034” sold in California (AG Notice 2021-01494, hereafter “Notice 3”).

16 AG Notices 2020-01681, 2021-00182, and 2021-01494 shall be referred collectively to herein as
17 the “Notices.”

18 Drive received the Notices. The Parties represent that, as of the date they execute this
19 Agreement, they are not aware of any public enforcer that is diligently prosecuting a Proposition 65
20 enforcement action related to the Listed Chemical in the Covered Products.

21 **1.6 Complaint**

22 On October 30, 2020, Davia filed a Complaint in the Superior Court of the State of California
23 for the County of Marin, Case No. CIV2002748, alleging violations by Drive of Health and Safety
24 Code § 25249.6 based on the alleged exposures to DINP and DIDP in Drive home health products
25 with PVC components as identified in Notice 1. On April 19, 2021, Davia filed a First Amended
26 Complaint in case CIV2002748 alleging violations by Drive of Health and Safety Code § 25249.6
27 based on the alleged exposures to DEHP, DBP, DINP and DIDP in the Drive medical home health
28 products with vinyl components as identified in Notice 1 and Notice 2. On October 13, 2021, Davia

1 filed a Second Amended Complaint in case CIV2002748 alleging violations by Defendant of Health
2 and Safety Code § 25249.6 based on the alleged exposures to DEHP, DBP, DINP and DIDP in Notice
3 1, Notice 2 and Notice 3.

4 **1.7 No Admission**

5 This Agreement resolves claims that are denied and disputed by Drive. The Parties enter
6 into this Agreement pursuant to a full, final and binding settlement of any and all claims between
7 the Parties for the purpose of avoiding prolonged litigation. Drive denies the material factual and
8 legal allegations contained in the Notices and Complaint, maintains that they did not knowingly or
9 intentionally expose California consumers to the Listed Chemicals through the reasonably
10 foreseeable use of the Covered Product (defined hereafter) and further contend that all Covered
11 Product they have manufactured, distributed, and/or sold in California have been and are in
12 compliance with all applicable laws. Nothing in this Agreement shall be construed as an admission
13 by Drive of any fact, finding, issue of law, or violation of law, nor shall compliance with this
14 Agreement constitute or be construed as an admission by Drive of any fact, finding, conclusion,
15 issue of law, or violation of law, all of which are specifically denied by Drive. However,
16 notwithstanding the foregoing, this section shall not diminish or otherwise affect Drive's
17 obligations, responsibilities, and duties under this Agreement.

18 **1.8 Consent to Jurisdiction**

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

23 **2. DEFINITIONS**

24 **2.1** The term "Product" or "Covered Product" shall mean Drive Oxygen Cylinder
25 Shoulder Bag, Item 18102 (822383104263), Drive Cervical Traction Set, Item #13004 (822383102986),
26 and Drive Revolving Adjustable Height Stools, including product 13034.
27
28

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

7 **2.3** “Effective Date” shall mean the date on which this Agreement has been fully executed
8 by both Parties.

9 **3. INJUNCTIVE RELIEF**

10 **3.1 Product Reformulation Commitment**

11 **3.1.1** No later than the Effective Date, Drive shall provide the Phthalate Free
12 phthalate concentration standards of Section 2.2 to any then-current vendor of any Covered
13 Products, if any, and request such entity not to provide any Covered Product that does not meet the
14 Phthalate Free concentration standards of Section 2.2. Drive shall maintain copies of all vendor
15 correspondence relating to the Phthalate Free concentration standards for two (2) years after the
16 Effective Date and shall produce such copies to Davia within thirty (30) days of receipt of reasonable
17 request made in writing from Davia.

18 **3.1.2** After the Effective Date, Drive shall provide the Phthalate Free phthalate
19 concentration standards of Section 2.2 to any New Vendor (as defined below) of Covered Product
20 and request such entity not to provide any Covered Product that does not meet the Phthalate Free
21 concentration standards of Section 2.2. “New Vendor” means any vendor of Covered Product from
22 whom Defendant was not obtaining Covered Product as of or prior to the Effective Date. Prior to
23 purchase and acquisition of any Covered Product from any New Vendor, and subject to Section 3.2
24 of this Agreement, Defendant shall request written confirmation from the New Vendor
25 demonstrating whether it has achieved compliance with the Phthalate Free phthalate concentration
26 standard for any Covered Product. For two (2) years after the Effective Date, for every Covered
27 Product Drive manufactures, causes to be manufactured, orders, causes to be ordered or otherwise
28 obtains from a New Vendor, Drive shall maintain copies of all testing, if any, of such products


1 demonstrating compliance with this section, shall maintain copies of all vendor correspondence
2 relating to the Phthalate Free concentration standards and shall produce such copies to Davia within
3 thirty (30) days of receipt of a reasonable request made in writing from Davia.

4 **3.2 Product Warning Labels**


5 For any Covered Product for which Drive has not received written confirmation that the
6 products are Phthalate Free, Drive shall not sell or ship any Covered Product unless it complies with
7 all warning requirements set forth in Section 3.2.1.

8 **3.2.1 Covered Product Warnings**


9 For all Covered Product that is not expressly confirmed to be Phthalate Free, Drive shall
10 affix a warning to the Covered Product or its immediate packaging that states one of the following:

11
12  **WARNING:** This product can expose you
13 to chemicals, including DEHP, DIDP, DBP or
14 DINP, that are known to the State of California
15 to cause cancer and birth defects or other
reproductive harm. For more information go to
www.P65Warnings.ca.gov;

16 or

17  **WARNING:** This product can expose you to
18 chemicals that are known to the State of
19 California to cause cancer and birth defects or
other reproductive harm. For more information
go to www.P65Warnings.ca.gov;

20 or

21  **WARNING:** Cancer and Reproductive
22 Harm - www.P65Warnings.ca.gov


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

26 For purposes of this Agreement, the Parties agree that Drive shall be deemed to be in
27 compliance with the Covered Product Warning requirements of Section 3.2 by either adhering to
28


1 Section 3.2 of this Agreement or by complying with any future warning language and placement
2 requirements expressly adopted by the State of California’s Office of Environmental Health Hazard
3 Assessment as of or after the Effective Date, and as they may be amended from time to time.

4 **3.2.2 Internet Website Warning.**


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

14  **WARNING:** This product can expose you
15 to chemicals, including DEHP, DIDP, DBP or
16 DINP, that are known to the State of California
17 to cause cancer and birth defects or other
reproductive harm. For more information go to
www.P65Warnings.ca.gov;

18 or

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

23 or

24  **WARNING:** Cancer and Reproductive
25 Harm - www.P65Warnings.ca.gov
26
27
28

1 **4. MONETARY PAYMENTS**

2 **4.1 Civil Penalty**

3 As a condition of settlement of all the claims referred to in this Settlement Agreement, Drive
4 shall cause to be paid a total of \$6,000 in civil penalties in accordance with California Health & Safety
5 Code § 25249.12(c)(1) & (d).

6 **4.2 Augmentation of Penalty Payments**

7 For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon
8 Drive and their counsel for accurate, good faith reporting to Davia of the nature and amounts of
9 sales activity of the Covered Product during the relevant period. If within nine (9) months of the
10 Effective Date, Davia discovers and presents to Drive evidence that during the relevant period the
11 Covered Product has been sold to California consumers by Defendants in sales volumes materially
12 different (more than 25%) than those identified by Defendants prior to execution of this Agreement,
13 then Defendants shall be liable for an additional penalty amount of \$10,000.00. Drive shall also pay
14 reasonable, additional attorney fees expended by Davia in discovering such additional sales and
15 reporting them to Defendants in accordance with this section. Davia agrees to provide Drive with
16 a written demand for such additional penalties and attorney fees under this Section. After service
17 of such demand, Drive shall have thirty (30) days to pay the additional civil penalties amount
18 demanded or negotiate with Davia as to an agreed amount of fees and penalties to be paid in
19 accordance with the method of payment of penalties and fees identified in Section 4.4. Should the
20 parties dispute whether Davia has provided appropriate evidence of sales volumes materially
21 different (more than 25%) than those identified by Drive prior to execution of this Agreement, then
22 the Parties shall have the issue decided by a mutually agreed upon Mediator, each side to bear its
23 own costs of the mediation. Should mediation not be successful in resolving the matter then, within
24 thirty (30) days of the mediation, Davia shall be entitled to file an action for breach of this Agreement
25 in which the sole issues for resolution by the Court shall be: (1) whether during the relevant period
26 Covered Product was sold to California consumers by Drive in sales volumes materially different
27 (more than 25%) than those identified by Drive prior to execution of this Agreement; and (2) if the
28 Court finds in favor of Davia on issue no. 1, the amount of legal fees, if any, Davia is entitled to

1 recover for discovering the additional sales and reporting them to Drive in accordance with this
2 section. In any action brought under this Section 4.2, the prevailing party shall be entitled to recover
3 its attorney's and other fees and costs.

4 **4.3 Reimbursement of Davia's Fees and Costs**

5 The Parties acknowledge that Davia and her counsel refused to consider any reimbursement
6 of plaintiff's fees or costs until all other terms of the settlement were reached. The Parties then
7 reached an accord on the reimbursement due to Davia and compensation of her counsel under
8 general contract principles and consistent with the private attorney general doctrine codified at
9 California Code of Civil Procedure section 1021.5, in the amount of \$46,750 for fees and costs
10 incurred investigating and negotiating a resolution of this matter. Such payment shall be made
11 payable to "Sheffer Law Firm".

12 **4.4 Payment Procedures**

13 No later than fifteen (15) days after execution of this Agreement, Drive shall deliver all
14 settlement payment funds required by this Agreement to its counsel. Within one (1) week of receipt
15 of the settlement funds, Drive's counsel shall confirm receipt in writing to plaintiff's counsel and,
16 thereafter, hold Drive's settlement checks or payment(s) until such time as the Court approves this
17 settlement as contemplated by Section 6. Within five (5) business days of the date Plaintiff provides
18 electronic mail notice to counsel for Defendant that the Court has approved this settlement, Drive's
19 counsel or Defendant shall deliver the settlement payments to Plaintiff's counsel as follows:

- 20 i. a civil penalty check payable to "OEIHA" (Memo line "Prop 65 Penalties, 2020-01681,
21 2021-00182"), in the amount of \$4,500;
- 22 ii. a civil penalty check payable to "Susan Davia" (Memo line "Prop 65 Penalties, 2020-
23 01681, 2021-00182") in the amount of \$1,500; and
- 24 iii. an attorney fee and cost reimbursement check payable to "Sheffer Law Firm" (Memo
25 line "2020-01681, 2021-00182") in the amount of \$46,750.

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

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 section
7 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 Drive 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.

15 **4.5 Issuance of 1099 Forms**

16 After this Agreement has been executed and funds have been transmitted to Plaintiff's
17 counsel at the address set forth in Section 4.4, Defendant shall cause three separate 1099 forms to be
18 issued, as follows:

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

22 (b) The second 1099 shall be issued to Davia in the amount paid pursuant to Sections 4.1
23 and 4.2 (if any), whose address and tax identification number shall be provided to Defendant
24 prior to any payments being due under this Agreement; and

25 (c) The third 1099 shall be issued to the Sheffer Law Firm (EIN: 55-08-58910) in the
26 amount paid pursuant to Section 4.3 and 4.2 (if any).

27 **5. RELEASES**

28 **5.1 DAVIA'S RELEASE OF DEFENDANT**

5.1.1 This settlement agreement is a full, final, and binding resolution between Davia, on
behalf of herself and in the public interest, and Drive of any violation of Proposition 65 that was or
could have been asserted by Davia on behalf of herself, her representatives, and/or attorneys, against

1 Drive, their past and present directors, officers, employees, attorneys, parents, subsidiaries,
2 representatives, shareholders, accountants, insurers, receivers, advisors, consultants, partners,
3 partnerships, divisions, assigns, agents, independent contractors, successors, heirs, predecessors in
4 interest, joint ventures, and commonly controlled corporations, licensees, customers, distributors,
5 wholesalers, retailers, marketplace hosts, and each entity to whom Drive directly or indirectly
6 distributes or sells Covered Product, including but not limited to 4MD Medical Solutions LLC, Scrip,
7 Inc., Allegro Medical Supplies, Inc., and AllegroMedical.com (“Released Parties”), based on its
8 alleged failure to warn about alleged exposures to the Listed Chemicals contained in the Covered
9 Product that was sold up to and including the Effective Date. Davia, on behalf of herself and in the
10 public interest, hereby fully releases and discharges all of the Released Parties from any and all
11 claims, actions, causes of action, suits, demands, liabilities, damages, penalties, fees, costs, and
12 expenses asserted, or that could have been asserted from the handling, use, sale and/or purchase of
13 the Covered Product, as to any alleged violation of Proposition 65 or its implementing regulations
14 regarding alleged exposures to Listed Chemicals arising from claims asserted in the Notice and
15 Complaint up to and including the Effective Date.

16 5.1.2 Davia on behalf of herself only also provides a general release and waiver which shall
17 be effective as a full and final accord and satisfaction, and as a bar to all claims, actions and causes
18 of action, of any nature, character or kind, known or unknown, suspected or unsuspected, arising
19 out of the subject matter of the Notice, Complaint, and/or the Covered Product to the extent the
20 Covered Product was manufactured, sold, or distributed by the Released Parties up to and including
21 the Effective Date, and for all actions taken and statements made (or that could have been taken or
22 made) by Drive and their attorneys and other representatives in connection with negotiating this
23 Agreement. Davia acknowledges that she is familiar with section 1542 of the California Civil Code,
24 which provides as follows:

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

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

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

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

15 **5.2 DRIVE'S RELEASE OF DAVIA**

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

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

1 Drive expressly waives and relinquishes all rights and benefits which it may have under, or
2 which may be conferred on it by the provisions of Section 1542 of the California Civil Code as well
3 as under any other state or federal statute or common law principle of similar effect, to the fullest
4 extent that it may lawfully waive such rights or benefits pertaining to the released matters identified
5 in this Section 5.2. In furtherance of such intention, the release hereby given shall be and remain in
6 effect as a full and complete release notwithstanding the discovery or existence of any such
7 additional or different claims or facts arising out of the released matters.
8

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

11 **5.3 COMPLIANCE WITH PROPOSITION 65**

12 Compliance with the terms of this Agreement shall be deemed to constitute compliance with
13 Proposition 65 by the Released Parties regarding alleged exposures to Listed Chemicals in the
14 Covered Product as set forth in and arising out of the Notices and Complaint.

15 **6. COURT APPROVAL**

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

25 **7. SEVERABILITY**

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

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8. GOVERNING LAW

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

9. NOTICES

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

For Defendant:

Robert Size, CEO
Medical Depot, Inc. d/b/a Drive DeVilBiss Healthcare
99 Seaview Blvd.
Port Washington, NY 11050

With copy to Defendant’s Counsel:

Stephanie A. Sheridan
Dennis E. Raglin
Steptoe & Johnson LLP
1 Market Street, Spear Tower, Suite 3900
San Francisco, CA
ssheridan@steptoe.com
draglin@steptoe.com

For Davia:

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

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, electronic mail, and/or other verifiable form of written communication.

10. 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). Davia agrees to release Drive from any liability for her failure to comply.

11. MODIFICATION

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

1 **12. ENTIRE AGREEMENT**

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

12 **13. ATTORNEYS' FEES**

13 **13.1** In any dispute concerning any matter related to this Agreement, the prevailing Party
14 shall be entitled to recover its costs and expenses, including attorneys' fees and costs. Except as
15 otherwise specifically provided herein, each Party shall bear its own costs and attorneys' fees in
16 connection with the Notices. Nothing in this Section shall preclude a Party from seeking an award
17 of sanctions pursuant to law.

18 **14. NEUTRAL CONSTRUCTION**

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


1 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

2 This Agreement may be executed in counterparts and by facsimile or portable document
3 format (PDF), each of which shall be deemed an original, and all of which, when taken together,
4 shall constitute one and the same document. Signatures by scanned and e-mailed image or facsimile
5 transmission shall have the same force and effect as original signatures and as an electronic record
6 executed and adopted by a Party with the intent to sign the electronic record pursuant to Civil Code
7 §§ 1633.1 *et seq.*

8 **16. AUTHORIZATION**

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

13 **IT IS SO AGREED**

<p>14 Dated: _____, 2022</p> <p>15 _____</p> <p>16</p> <p>17</p> <p>18 Medical Depot, Inc. d/b/a Drive DeVilbiss 19 Healthcare</p> <p>20</p>	<p>21 Dated: <u>5/31</u>, 2022</p> <p>22 </p> <p>23 _____</p> <p>24 Susan Davia</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>
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15. COUNTERPARTS, FACSIMILE SIGNATURES

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

16. AUTHORIZATION

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

IT IS SO AGREED

Dated: <u>May 24</u> , 2022  _____ Medical Depot, Inc. d/b/a Drive DeVilbiss Healthcare	Dated: _____, 2022 _____ Susan Davia
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