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8
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10 **UNITED STATES DISTRICT COURT**
11 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**

12 **ROCKSY, LLC, a California limited**
13 **liability company,**

14 **Plaintiff,**

15 **vs.**

16 **SPACELABS HEALTHCARE,**
17 **INC., a Delaware corporation,**

18 **Defendant.**

CASE NO:

COMPLAINT

1. **FOR LIABILITY UNDER CERCLA (42 U.S.C. A. §§ 9601 et seq.);**
2. **FOR RECOVERY UNDER HSAA (California Health & Safety Code § 25300 et seq.);**
3. **FOR PRIVATE NUISANCE (California Civil Code § 3479);**
4. **FOR PUBLIC NUISANCE (California Civil Code § 3480);**
5. **FOR NEGLIGENCE AND NUISANCE PER SE (California Health & Safety Code Section 25189.5, et seq.);**
6. **FOR UNJUST ENRICHMENT (Common Law); and**
7. **FOR DECLARATORY RELIEF (28 U.S.C.A. § § 2201, 2202**

DEMAND FOR JURY TRIAL

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1 Plaintiff, Rocksy, LLC (“Rocksy”), by and through its undersigned attorneys,
2 alleges as its complaint against Defendants Spacelabs Healthcare, Inc. (“Spacelabs
3 Healthcare”) as follows:

4 **INTRODUCTION**

5 1. This action arises under the Comprehensive Environmental Response,
6 Compensation, and Liability Act (“CERCLA”), [42 U.S.C.A. §§ 9601 et seq.](#), as
7 amended, the Hazardous Substance Account Act; California Health & Safety Code
8 §§ 25300 et seq.; California statutory law; and common law.

9 2. This is a civil action commenced for recovery of response costs from
10 the named Defendant incurred or to be incurred by Plaintiff in responding to the
11 releases or threat of releases of hazardous substances on, into and/or from the
12 property and/or groundwater located at and/or under 15519-15541 Lanark Street,
13 City of Los Angeles, County of Los Angeles, State of California (the “Site”). This
14 is also a civil action for damages to Plaintiff from such contamination.

15 3. All of Plaintiff’s claims for relief contained in this complaint arise out
16 of the same transaction and occurrence as the claim asserted under CERCLA.

17 4. Plaintiff further seeks a declaration of Defendant’s liability for damages
18 and for contribution and/or indemnity to and for all unreimbursed present and future
19 response costs to be incurred by Plaintiff in connection with the Site and
20 groundwater contamination.

21 **JURISDICTION AND VENUE**

22 5. This Court has subject matter jurisdiction over this case pursuant to
23 CERCLA, [42 U.S.C.A. §§ 9601 et seq.](#), [42 U.S.C.A §1332](#) and principles of pendant
24 jurisdiction. Regarding diversity jurisdiction, more than \$75,000 is at issue.

25 6. Venue is proper in this district pursuant to § 113b of CERCLA, and [28](#)
26 [U.S.C.A. § 1391\(b\) and \(c\)](#), because the releases or threatened releases of hazardous
27 substances that give rise to plaintiff’s claims have occurred in this district.
28

NOTICE

7. Plaintiff has provided a copy of this complaint to the Attorney General of the United States and to the Administrator of the Environmental Protection Agency and to the Director of the California Department of Toxics Substances Control.

PARTIES

8. Plaintiff, is now, and at all times relevant to this action was, a Limited Liability Corporation duly organized and existing under the laws of the State of California, engaged in the business of theatrical drapery manufacturing and show business studio services, with its principal place of business located at the Site.

9. Defendant Spacelabs Healthcare is a Delaware corporation with its principal place of business in Snoqualmie, Washington. Plaintiff is informed and believes and on the basis of such information and belief alleges Spacelabs Healthcare is the successor-in-interest to Spacelabs, Inc., a California corporation (“Spacelabs”), whether considered from the standpoint of traditional successor liability or from the standpoint of expanded CERCLA continuity of enterprise successor liability. In regard to successor liability, see Exhibit 1 hereto (highlight added), containing representations and admissions that Spacelabs Healthcare has retained essentially the same name as Spacelabs; is producing the same product (medical telemetry) as Spacelabs; and is explicitly holding itself out as the continuation of the previous Spacelabs enterprise. During the 1950’s to at least the mid-1960’s Spacelabs operated on at least that portion of the Site corresponding to the street address of 15519-15521 Lanark Street, Los Angeles, California (the “15519-15521 portion”). Spacelabs was in the business of providing, among other things, real time medical monitoring in connection with NASA’s space program and later was in the business of providing medical technology to civilian healthcare facilities. Space Healthcare is, among other things, in the same line of business.

10. Plaintiff is informed and believes and on the basis of such information

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1 and belief alleges that Spacelabs, as Spacelabs Healthcare's predecessor-in-interest,
2 in the course of its operations at the 15519-15521 portion of the Site ,used,
3 processed, produced, stored, treated, and/or generated PCE, TCE and the chemicals
4 listed in the following paragraphs

5 11. Plaintiff is informed and believes and on the basis of such information
6 and belief alleges that Spacelabs caused or contributed to the spilling, leaking,
7 disposal and release into the environment of the hazardous substances, as set forth
8 in the following paragraphs, during said company's operations from 1958 through
9 at least 1965 at the 15519-15521 portion of the Site (see Exhibit 2 hereto, evidencing
10 such operations) thereby creating a condition of hazardous substance contamination
11 at and on at least the 15519-15521 portion of the Site, and also off of that portion of
12 the Site, for which Spacelabs Healthcare, as Spacelabs' successor-in-interest, is now
13 responsible.

14 **FIRST CLAIM FOR RELIEF**

15 **COST RECOVERY UNDER CERCLA § 107(A)**

16 12. Plaintiff repeats and realleges each and every allegation contained in
17 paragraphs 1 through 11, as though fully set forth here.

18 13. Plaintiff is informed and believes and on the basis of such information
19 and belief alleges that Spacelab's Healthcare's predecessor-in-interest, Spacelabs,
20 transported or arranged for the transport of hazardous substances that Spacelabs
21 owned or possessed to at least the 15519-15521 portion of the Site; stored, treated,
22 and disposed of hazardous substances on at least that portion of the Site; and
23 otherwise operated on at least that portion of the Site during the time that hazardous
24 substances were disposed of there. Spacelabs Healthcare, as Spacelabs' successor-
25 in-interest, is now thereby jointly and severally liable under §107(a) of CERCLA,
26 [42 U.S.C.A. § 9607\(a\)](#), in particular [42 U.S.C.S. § 9607\(a\)\(4\)\(B\)](#) (*United States v.*
27 *Atlantic Research Corp.*, (2007) 551 U.S. 128).

28 14. Plaintiff is informed and believes and on the basis of such information

1 and belief alleges that the Site, including the 15519-15521 portion thereof, is a
2 facility, as that term is defined in CERCLA, [42 U.S.C.A. § 9601\(9\)](#).

3 15. A release or threatened release of a hazardous substance, as those terms
4 are defined in CERCLA, at [42 U.S.C.A. § 9601\(22\)](#), (14), has occurred at the Site,
5 including the 15519-15521 portion thereof.

6 16. Plaintiff did not cause or contribute to the environmental contamination
7 at the Site and denies that Plaintiff is liable for costs incurred as the result of the
8 alleged disposal, release or threatened release of hazardous substances at the Site.
9 However, in the interest of an expeditious cleanup and acting in good faith, plaintiff
10 undertook actions including, but not limited to, the response actions listed below in
11 an effort to remove and remediate the environmental contamination at the Site.
12 Plaintiff has incurred costs in excess of \$75,000, according to proof, in the course of
13 taking these actions. These actions and the costs incurred in taking them are
14 consistent with the National Contingency Plan.

15 17. In or about May-June 2003, Smith-Emery Geoservices performed a
16 Phase II Environmental Site Assessment at the Site. The report from such
17 investigation concluded that the soil vapor at the 15519-15521 portion of the Site
18 was contaminated with tetrachloroethylene (PCE) in concentrations as high as
19 15,400 ug/m and trichloroethylene (TCE) in concentrations as high as 96,000 ug/m.

20 18. This assessment also concluded that the alleyway to the east of the
21 15519-15521 portion of the Site was contaminated with concentrations in soil vapor
22 of as high as 94,200 ug/m.

23 19. In or about November, 2003, Smith-Emery Geoservices performed a
24 Site Investigation at the Site and reported that soil at the 15519-15521 portion of the
25 Site was contaminated with TCE in concentrations as high as 650 ug/kg and also
26 was contaminated with PCE.

27 20. In or about December, 2012, Partner Engineering and Science, Inc.
28 performed a Phase II Subsurface Investigation at the Site and reported, regarding the

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