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10 KEEP AMERICA SAFE AND BEAUTIFUL

ELECTRONICALLY  
**FILED**  
Superior Court of California,  
County of San Francisco

**01/30/2025**  
Clerk of the Court  
BY: SAHAR ENAYATI  
Deputy Clerk

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SUPERIOR COURT OF THE STATE OF CALIFORNIA  
COUNTY OF SAN FRANCISCO - UNLIMITED CIVIL JURISDICTION

KEEP AMERICA SAFE AND BEAUTIFUL,  
Plaintiff,  
v.  
ORTHO SYSTEMS; and DOES 1-30,  
inclusive,  
Defendants.

Case No.

**COMPLAINT FOR CIVIL PENALTIES  
AND INJUNCTIVE RELIEF**

**CGC-25-621962**  
Violations of Health & Safety Code  
§ 25249.5, *et seq.* (Proposition 65)

Plaintiff KEEP AMERICA SAFE AND BEAUTIFUL (“KASB” or “Plaintiff”), acting in the public interest, alleges a cause of action against defendants ORTHO SYSTEMS and DOES 1-30 (“Defendants”) for their alleged violations of Health & Safety Code § 25249.6, *et seq.*, as follows:

**INTRODUCTION AND NATURE OF THE ACTION**

1. KASB brings this representative action in the public interest on behalf of the citizens of the State of California. By this action, KASB seeks to enforce the People’s right to be informed of the health hazards caused by exposures to Di-n-Butyl Phthalate (“DBP”), a toxic chemical found in and on pneumatic ankle stabilizers with vinyl components manufactured, imported, distributed, sold and offered for sale by Defendants in the State of California.

2. By this Complaint, plaintiff seeks to remedy Defendants’ failure to warn individuals not covered by California’s Occupational Safety Health Act, Labor Code § 6300 *et seq.* (“consumers”)

1 exposed to substances known to cause birth defects or other reproductive harm through exposures to  
2 when they purchase, use and handle Defendants’ pneumatic ankle stabilizers with vinyl components.

3 3. Detectable levels of DBP are found in and on the pneumatic ankle stabilizers with vinyl  
4 components Defendants manufacture, import, sell and distribute for sale in California.

5 4. Pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, codified at  
6 Health and Safety Code § 25249.6 *et seq.* (“Proposition 65”), it is unlawful for a person in the course  
7 of doing business to knowingly and intentionally expose consumers and end-users in California to  
8 chemicals known to the State to cause cancer, birth defects or other reproductive harm, without first  
9 providing a “clear and reasonable warning” regarding the presence of these chemicals in Defendants’  
10 products and the harms associated with exposures to such chemicals.

11 5. Defendants manufacture, distribute, import, sell, and offer for sale, in and into  
12 California pneumatic ankle stabilizers with vinyl components (“PRODUCTS”) containing DBP,  
13 without providing a warning regarding the presence of and the harms associated with exposures to  
14 DBP in Defendants’ PRODUCTS. Such PRODUCTS include, without limitation, the *Ovation*  
15 *Medical Pneumatic Ankle Stirrup, White Standard/Universal, SKU: 2000W*). Defendants’ violations  
16 subject them to civil penalties, enjoinder, preliminary and permanent injunctive relief. Health &  
17 Safety Code § 25249.7(a) and (b).

18 **PARTIES**

19 6. KASB is a non-profit corporation organized under the laws of California and acting in  
20 the public interest to reduce the presence of toxic chemicals found in consumer products and to  
21 enforce California citizens’ right to be informed about the presence of toxic chemicals in the products  
22 they purchase and use and the harms associated with exposures to such chemicals. KASB is a  
23 “person” within the meaning of Health & Safety Code § 25249.11(a). It brings this action in the  
24 public interest, pursuant to Health and Safety Code § 25249.7(d).

25 7. At all relevant times, defendant ORTHO SYSTEMS operates as a “person in the course  
26 of doing business” with ten (10) or more employees within the meaning of and as defined by Health  
27 and Safety Code §§ 25249.6 and 25249.11.

1           8.    ORTHO SYSTEMS manufactures, imports, distributes, sells, and offers the  
2 PRODUCTS for sale or use in California, or implies by its conduct that it manufactures, imports,  
3 distributes, sells, and/or offers the PRODUCTS for sale or use to consumers and other individuals in  
4 California.

5           9.    Doe Defendants 1-10 (“MANUFACTURER DEFENDANTS”) are each a “person in the  
6 course of doing business” within the meaning of and as defined by Health and Safety Code  
7 §§ 25249.6 and 25249.11. MANUFACTURER DEFENDANTS, and each of them, assemble,  
8 fabricate, and manufacture, or they each imply by their conduct they do so for one or more of the  
9 PRODUCTS sold and/or offered for sale or use to consumers and other individuals in California.

10          10.   Doe Defendants 11-20 (“DISTRIBUTOR DEFENDANTS”) are each a person in the  
11 course of doing business within the meaning of Health and Safety Code §§ 25249.6 and 25249.11.  
12 DISTRIBUTOR DEFENDANTS, and each of them, distribute, transfer, and transport the  
13 PRODUCTS sold and offered for sale to consumers and other individuals in California, or they each  
14 imply by their conduct they distribute, transfer, and transport one or more of the PRODUCTS to  
15 individuals, businesses, and retailers for sale or use in California.

16          11.   Doe Defendants 21-30 (“RETAILER DEFENDANTS”) are each a person in the course  
17 of doing business within the meaning of and as defined by Health and Safety Code §§ 25249.6 and  
18 25249.11. RETAILER DEFENDANTS, and each of them, offer the PRODUCTS for sale to  
19 consumers and other individuals in California.

20          12.   At this time, the true names of Defendants DOES 1 through 30, inclusive, are unknown  
21 to KASB, who therefore, sues these Doe Defendants by their fictitious names, pursuant to Code of  
22 Civil Procedure § 474. Each of the fictitiously named Defendants is responsible in some manner for  
23 the acts and occurrences alleged herein and the violations and harms caused thereby. When  
24 ascertained, KASB will identify these Doe Defendants by their true names in an amendment to this  
25 Complaint.

1 13. ORTHO SYSTEMS, MANUFACTURER DEFENDANTS, DISTRIBUTOR  
2 DEFENDANTS, and RETAILER DEFENDANTS shall be referred to collectively herein as the  
3 “DEFENDANTS.”

4 **JURISDICTION AND VENUE**

5 14. This Court has jurisdiction pursuant to Health & Safety Code § 25249.7, which allows  
6 enforcement by any court of competent jurisdiction. The Superior Courts of the State of California  
7 have jurisdiction pursuant to California Constitution Article VI, section 10, which grants the Superior  
8 Courts “original jurisdiction in all causes except those given by statute to other trial courts.” The  
9 statute under which this action is brought does not specify any other basis of subject matter  
10 jurisdiction.

11 15. This Court has jurisdiction over DEFENDANTS because DEFENDANTS, and each of  
12 them are a person, firm, corporation or association that is a citizen of the State of California, does  
13 sufficient business in California, has sufficient minimum contacts in California, and/or otherwise  
14 purposefully and intentionally avail themselves of the California market through their manufacture,  
15 importation, distribution, promotion, marketing and sale of PRODUCTS in California.  
16 DEFENDANTS’ purposeful availment renders the exercise of personal jurisdiction by this Court  
17 consistent with traditional notions of fair play and substantial justice.

18 16. Venue is proper in the Superior Court for the County of San Francisco, pursuant to Code  
19 of Civil Procedure §§ 393, 395, and 395.5, because this Court is a court of competent jurisdiction,  
20 because KASB seeks civil penalties against DEFENDANTS, because one or more instances of  
21 wrongful conduct occurred, and continue to occur, in this county, and/or because DEFENDANTS  
22 conducted, and continue to conduct, business in the County of San Francisco with respect to the  
23 PRODUCTS.

24 **REGULATORY BACKGROUND AND LAW**

25 17. Formally known as the Safe Drinking Water and Toxic Enforcement Act of 1986 and  
26 codified at Health & Safety Code § 25249.6 *et seq.*, Proposition 65 states, in relevant part, “[n]o  
27 person in the course of doing business shall knowingly and intentionally expose any individual to a  
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1 chemical known to cause cancer or reproductive toxicity without first giving a clear and reasonable  
2 warning to such individual . . .”

3 18. Under the Act, a “person in the course of doing business” is defined as a business with  
4 ten (10) or more employees. Health & Safety Code § 25249.11(b). The Act prohibits businesses from  
5 exposing consumers to hazardous chemicals without first giving a “clear and reasonable warning.”  
6 Health & Safety Code § 25249.6.

7 19. Exposing consumers to hazardous chemicals means to cause consumers to ingest, inhale,  
8 contact via body surfaces or otherwise come into contact with a listed chemical. California Code of  
9 Regulations (“Cal. Code Regs.”) Title 27, § 25102(i). An exposure to a hazardous chemical is  
10 defined as one that “results from a person’s acquisition, purchase, storage, consumption or other  
11 reasonably foreseeable use of a product...” Cal. Code Regs. Tit. 27, § 25600(h).

12 20. Under Proposition 65, persons violating the statute may be enjoined in any court of  
13 competent jurisdiction and may be subject to civil penalties of up to \$2,500 per day, per violation.  
14 Health & Safety Code § 25249.7.

15 21. On December 2, 2005, pursuant to Proposition 65 implementing regulations, California  
16 listed Di-n-Butyl Phthalate as a chemical known to cause birth defects or other reproductive harm.  
17 DBP became subject to the “clear and reasonable warning” requirements one year later, on December  
18 2, 2006. Cal. Code Regs. Tit. 27, § 27001(c); Health & Safety Code §§ 25249.8, 25249.10(b).

19 **STATEMENT OF FACTS**

20 22. DEFENDANTS sell and offer their PRODUCTS for sale in California without a clear  
21 and reasonable warning in violation of Cal. Code Regs. Tit. 27, § 25600, *et seq.*

22 23. DEFENDANTS’ PRODUCTS expose consumers and end-users in California to DBP at  
23 levels requiring a warning under Proposition 65 when they touch, handle or otherwise contact the  
24 PRODUCTS during reasonably foreseeable use.

25 24. On November 19, 2024, KASB served a 60-Day Notice of Violation (“Notice”),  
26 together with the required certificate of merit, on ORTHO SYSTEMS, the Office of the Attorney  
27 General, and all requisite public enforcement agencies, alleging, as a result of DEFENDANTS’ sales  
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1 of the PRODUCTS, consumers and end-users in California were, and are, exposed to DBP without  
2 first receiving the “clear and reasonable warning” required by Proposition 65.

3 25. After receiving plaintiff’s Notice, no public enforcement agency has commenced or is  
4 diligently prosecuting a cause of action against DEFENDANTS to enforce the alleged violations of  
5 Proposition 65 that are the subject of the Notice.

6 **FIRST CAUSE OF ACTION**

7 **(Violation of Proposition 65 - Against All DEFENDANTS)**

8 26. KASB realleges and incorporates by reference, as if fully stated herein, the allegations  
9 set forth in Paragraphs 1 through 25, inclusive.

10 27. DEFENDANTS’ PRODUCTS contain DBP in levels requiring a clear and reasonable  
11 warning under Proposition 65.

12 28. DEFENDANTS know or should have known their PRODUCTS contain DBP. As a  
13 result of plaintiff’s Notice, DEFENDANTS now possess actual knowledge of the presence of DBP in  
14 their PRODUCTS.

15 29. DEFENDANTS’ PRODUCTS expose consumers, end-users, and other individuals in  
16 California to DBP through dermal contact and ingestion during the reasonably foreseeable use of the  
17 PRODUCTS.

18 30. The normal and reasonably foreseeable use of the PRODUCTS causes exposures to  
19 DBP.

20 31. DEFENDANTS know the normal and reasonably foreseeable use of the PRODUCTS  
21 exposes consumers, end-users, and other individuals to DBP through dermal contact and/or ingestion.

22 32. DEFENDANTS intend to expose consumers, end-users, and other individuals in  
23 California to DBP during their reasonably foreseeable use of the PRODUCTS. Such exposures to DBP  
24 occur through DEFENDANTS deliberate and non-accidental participation in the California market.

25 33. The exposures to DBP caused by DEFENDANTS and endured by consumers and other  
26 individuals in California are not exempt from the “clear and reasonable warning” requirements of  
27 Proposition 65.

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1 34. DEFENDANTS failed to provide a “clear and reasonable warning” to consumers and  
2 other individuals in California exposed to DBP through dermal contact and/or ingestion during their  
3 reasonably foreseeable use of the PRODUCTS. Defendants continue to fail to provide such warning.

4 35. Contrary to the express policy and statutory prohibition of Proposition 65, consumers  
5 are exposed to DBP through dermal contact and ingestion during their use of PRODUCTS  
6 DEFENDANTS sold, sell and offer for sale without a “clear and reasonable warning.” Such  
7 consumers and other individuals in California suffer irreparable harms for which they have no plain,  
8 speedy, or adequate remedy at law.

9 36. DEFENDANTS manufacture, import, distribute, sell, and offer the PRODUCTS for sale  
10 or use in violation of Health and Safety Code § 25249.6. DEFENDANTS’ violations continue beyond  
11 their receipt of KASB’s Notice. As such, DEFENDANTS’ violations are ongoing and continuous in  
12 nature and, unless enjoined, will continue in the future.

13 37. Pursuant to Health and Safety Code § 25249.7(b), and as a consequence their acts and  
14 omissions, DEFENDANTS, and each of them, are liable for a maximum civil penalty of \$2,500 per  
15 violation.

16 38. As a consequence of DEFENDANTS’ acts and omissions, Health and Safety Code  
17 § 25249.7(a) specifically authorizes the Court to grant the relief prayed for herein.

18 **PRAYER FOR RELIEF**

19 Wherefore, KASB prays for relief and judgment against DEFENDANTS, and each of them,  
20 as follows:

21 1. That the Court, pursuant to Health and Safety Code § 25249.7(a), preliminarily and  
22 permanently enjoin DEFENDANTS from manufacturing, distributing, importing, marketing or  
23 otherwise offering the PRODUCTS for sale or use in California without first providing a “clear and  
24 reasonable warning” to consumers regarding the presence of, and the harms associated with,  
25 exposures to DBP;

1           2. That the Court, pursuant to Health and Safety Code § 25249.7(a), issue preliminary and  
2 permanent injunctions mandating DEFENDANTS recall PRODUCTS intended for sale in or into  
3 California that do not bear a clear and reasonable warning;

4           3. That the Court assess civil penalties against DEFENDANTS, and each of them, in the  
5 amount of \$2,500 per violation, according to proof at trial;


6           4. That the Court award plaintiff its reasonable attorneys' fees and costs of suit; and

7           5. That the Court grant such further relief as it deems just and equitable.

8  
9 Dated: January 30, 2025

Respectfully submitted,

SEVEN HILLS LLP

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12 By:  \_\_\_\_\_

13 Rebecca M. Jackson  
14 Attorneys for Plaintiff  
15 KEEP AMERICA SAFE AND  
16 BEAUTIFUL  
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