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10 KEEP AMERICA SAFE AND BEAUTIFUL

FILED
San Francisco County Superior Court
JAN - 3 2023
CLERK OF THE COURT
[Signature]
Deputy Clerk

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

11 KEEP AMERICA SAFE AND BEAUTIFUL,
12 Plaintiff,
13 v.
14 SYNERGEE FITNESS WORLDWIDE INC.
15 DBA SYNERGEE USA; and DOES 1-30,
16 inclusive,
17 Defendants.

Case No. CGC-21-596798
**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT**
Date: January 3, 2023
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Richard B. Ulmer, Jr.
Complaint Filed: November 23, 2021
Trial Date: None set.

1 In the above-entitled action, Plaintiff Keep America Safe and Beautiful and Defendant
2 Synergee Fitness Worldwide Inc. dba Synergee USA, having agreed through their respective
3 counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form
4 of a Consent Judgment, and following this Court's issuance of an Order approving this
5 Proposition 65 settlement and Consent Judgment,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California
7 Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment
8 is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**.
9 By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under
10 Code of Civil Procedure § 664.6.

11
12 **IT IS SO ORDERED.**

13
14 Dated: 1/3/23

64
JUDGE OF THE SUPERIOR COURT

RICHARD B. ULMER

EXHIBIT A

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Attorneys for Plaintiff
KEEP AMERICA SAFE AND BEAUTIFUL

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF SAN FRANCISCO

UNLIMITED CIVIL JURISDICTION

KEEP AMERICA SAFE AND BEAUTIFUL,

Plaintiff,

v.

SYNERGEE FITNESS WORLDWIDE
INC. DBA SYNERGEE USA; and DOES 1-
30, inclusive,

Defendants.

Case No. CGC-21-596798

[PROPOSED] CONSENT JUDGMENT

(Health & Safety Code § 25249.6 et seq. and
Code of Civil Procedure § 664.6)

1 **1. INTRODUCTION**

2 This Consent Judgment is entered into by and between plaintiff Keep America Safe and
3 Beautiful (“KASB”) and defendant Synergee Fitness Worldwide Inc. dba Synergee USA (“Synergee”),
4 with KASB and Synergee each individually referred to as a “Party” and collectively, as the “Parties,”
5 to resolve the allegations in the March 3, 2021 60-Day Notice of Violation in compliance with the Safe
6 Drinking Water and Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.*
7 (“Proposition 65”).

8 **1.1 The Parties**

9 KASB is a California-based non-profit organization proceeding in the public interest pursuant
10 to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of
11 California to cause cancer, birth defects, or other reproductive harm are disclosed or eliminated from
12 consumer products sold in California. Synergee is a person in the course of doing business for
13 purposes of California Health & Safety Code § 25249.11(b).

14 **1.2 Consumer Product Description**

15 KASB alleges that Synergee manufactures, imports, sells, or distributes for sale in California
16 tricep ropes with rubber stoppers containing di(2ethylhexyl) phthalate (“DEHP”), including but not
17 limited to, *Dual Ended Tricep Rope with Rubber Stoppers, UPC 8 1003223117 0, ASIN*
18 *B083VWK6SF*, without providing the health hazard warning that KASB alleges is required by
19 California Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”). Tricep ropes with rubber
20 stoppers are referred to hereinafter as the “Products.” DEHP is listed pursuant to Proposition 65 as a
21 chemical known to the State of California to cause birth defects and other reproductive harm.

22 **1.3 Notice of Violation**

23 On March 3, 2021, KASB served Synergee, Amazon.com, Inc., the California Attorney
24 General, and the requisite public enforcement agencies with a 60-Day Notice of Violation
25 (“Notice”), alleging Synergee violated Proposition 65 by failing to warn its customers and
26 consumers in California that the Products can expose users to DEHP. No public enforcer has
27 commenced and is diligently prosecuting an action to enforce the allegations set forth in the Notice.

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1 **1.4 Complaint**

2 On November 23, 2021, KASB commenced the instant action (“**Complaint**”), naming
3 Synergee as a defendant for the alleged violations of Proposition 65 that are the subject of the
4 Notice.

5 **1.5 No Admission**

6 Synergee denies the material, factual and legal allegations contained in the Notice and
7 Complaint and maintains that all products it sold or distributed for sale in California, including the
8 Products, have been, and are, in compliance with all laws. Nothing in this Consent Judgment shall
9 be construed as, nor shall compliance with this Consent Judgment constitute or be construed as, an
10 admission by Synergee of any fact, finding, conclusion of law, issue of law, or violation of law.
11 This section shall not, however, diminish or otherwise affect Synergee’s obligations, responsibilities,
12 and duties under this Consent Judgment.

13 **1.6 Jurisdiction**

14 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
15 jurisdiction over Synergee as to the allegations contained in the Complaint; that venue is proper in
16 San Francisco County; and that the Court has jurisdiction to enter and enforce the provisions of this
17 Consent Judgment, pursuant to Proposition 65 and Code of Civil Procedure § 664.6.

18 **1.7 Effective Date**

19 The term “Effective Date” means the date on which the Court approves this Consent
20 Judgment and enters Judgment pursuant to its terms.

21 **2. INJUNCTIVE RELIEF: REFORMULATION, WARNINGS AND NOTIFICATION**

22 **2.1 Reformulation Commitment**

23 Commencing on the Effective Date and continuing thereafter, all Products Synergee
24 manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through
25 one or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard
26 for Reformulated Products, as defined by Section 2.2, or be accompanied by a clear and reasonable
27 warnings pursuant to Section 2.3.

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2.2 Reformulation Standard

For purposes of this Consent Judgment, “**Reformulated Products**” are defined as Products which, if they contain di(2-ethylhexyl) phthalate (“**DEHP**”), di-n-butyl phthalate (“**DBP**”), diisononyl phthalate (“**DINP**”), butyl benzyl phthalate (“**BBP**”), di-isodecyl phthalate (“**DIDP**”) and di-n-hexyl phthalate (“**DnHP**”), contain any or all such chemicals each in a maximum concentration of less than 0.1 percent (1,000 parts per million) when analyzed by a laboratory accredited by the State of California, a federal agency, or a nationally recognized accrediting organization. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission (“**CPSC**”) methodology CPSC CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings

Synergee shall provide clear and reasonable warnings for all Products provided for sale to customers in California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, *et seq.* Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.

(a) **DEHP Warning.** The Warning for Products containing DEHP, a phthalate chemical known to cause cancer and birth defects or other reproductive harm, in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

⚠ **WARNING:** This product can expose you to DEHP, which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

(b) **Warnings for DEHP and DINP.** The Warning for Products containing DEHP and the phthalate chemical only known to cause cancer, DINP, each in excess of the

Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

⚠WARNING: This product can expose you to DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm, DINP, which is known to the State of California to cause cancer, and [DIDP] which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The bracketed language in the preceding warnings may be changed to DBP, BBP and/or DnHP, as appropriate, at Synergee's option.

(f) Warnings for DEHP and DINP and two or more of the following phthalate chemicals: DIDP, DBP, BBP or DnHP. The Warning for Products containing DEHP, DINP and *two* or more of the phthalate chemicals – DIDP, DBP, BBP or DnHP – each in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

⚠WARNING: This product can expose you to DEHP, which is known to the State of California to cause cancer and birth defects or other reproductive harm, DINP, which is known to the State of California to cause cancer, and chemicals including [DIDP] which are known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The bracketed language in the preceding warnings may be changed to DBP, BBP and/or DnHP, as appropriate, at Synergee's option.

(g) Warnings for DIDP, DBP, BBP or DnHP. The Warning for Products containing DIDP, DBP, BBP or DnHP in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

⚠WARNING: This product can expose you to [DIDP], which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The bracketed language in the preceding warnings may be changed to DBP, BBP or DnHP, as appropriate, at Synergee's option.

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(h) **Warnings for two or more of the following phthalate chemicals: DIDP, DBP, BBP or DnHP.** The Warning for Products containing *two* or more of the phthalate chemicals – DIDP, DBP, BBP or DnHP – each in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

▲ **WARNING:** This product can expose you to chemicals including [DIDP], which are known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The bracketed language in the proceeding warnings may be changed to DBP, BBP or DnHP, as appropriate, at Synergee's option.

(i) **DINP Warning.** The Warning for Products containing DINP in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

▲ **WARNING:** This product can expose you to DINP, which is known to the State of California to cause cancer. For more information go to www.P65Warnings.ca.gov.

(j) **Warnings for DINP and one of the following phthalate chemicals: DIDP, DBP, BBP or DnHP.** The Warning for Products containing DINP and one of the phthalate chemicals – DIDP, DBP, BBP or DnHP – in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

▲ **WARNING:** This product can expose you to DINP, which is known to the State of California to cause cancer, and [DIDP] which is known to the State of California to cause birth defects or other reproductive harm. For more information go to www.P65Warnings.ca.gov.

The bracketed language in the proceeding warnings may be changed to DBP, BBP or DnHP, as appropriate, at Synergee's option.

(k) **Warnings for DINP and two or more of the following phthalate chemicals: DIDP, DBP, BBP or DnHP.** The Warning for Products containing DINP and *two* or more of the phthalate chemicals – DIDP, DBP, BBP or DnHP – each in excess of the Reformulation Standard for Reformulated Products set forth in Section 2.2 shall consist of the following statement:

1 **⚠WARNING:** This product can expose you to DINP, which is known to the
2 State of California to cause cancer, and chemicals including
3 [DIDP] which are known to the State of California to cause
 birth defects or other reproductive harm. For more
 information go to www.P65Warnings.ca.gov.

4 The bracketed language in the preceding warnings may be changed to DBP, BBP and/or DnHP, as
5 appropriate, at Synergee's option.

6 **(l) Short-Form Warnings.** As an alternative to the warnings set forth in
7 subsection 2.3(a)-(k) above, Synergee may, but is not required to, use the short-form warning
8 (**"Short-Form Warning"**) corresponding to phthalate content, subject to the additional requirements
9 in Sections 2.4 and 2.5, as follows:

10 For DEHP or DINP and DEHP, DIDP, DBP, BBP or DnHP:

11 **⚠ WARNING:** Cancer and Reproductive Harm- www.P65Warnings.ca.gov.

12 For DIDP, DBP, BBP or DnHP:

13 **⚠ WARNING:** Reproductive Harm- www.P65Warnings.ca.gov.

14 For DINP:

15 **⚠ WARNING:** Cancer - www.P65Warnings.ca.gov.

16 **(m) Foreign Language Requirement.** Where a consumer product sign, label or
17 shelf tag used to provide a warning includes consumer information, as that term is defined in Title 27
18 California Code of Regulations § 25600.1(c) (**"Consumer Information"**), in languages other than
19 English, the warning must also be provided in those languages in addition to English.

20 **2.4 Product Warnings**

21 Synergee shall affix a warning to the Product label or otherwise directly on each Product
22 provided for sale to consumers located in California and to customers with retail outlets in California
23 or nationwide distribution. For the purpose of this Consent Judgment, **"Product label"** means a
24 display of written, printed or graphic material that is printed on or affixed to each of a Product or its
25 immediate container or wrapper. A warning provided pursuant to Section 2.3(a) or (l) must print the
26 word **"WARNING:"** in all capital letters and in bold font. The warning symbol to the left of the
27 word **"WARNING:"** must be a black exclamation point in a yellow equilateral triangle with a black
28 outline, except that if the labeling does not use the color yellow, then the symbol may be in black and

white. The entire warning shall appear in a type size of at least 6-point type and no smaller than the largest type size used for other Consumer Information on the Products.

2.5 Internet Warnings

If, after the Effective Date, Synergee sells Products via the internet directly, or indirectly through customers with nationwide distribution or e-commerce websites, to customers located in California, Synergee shall provide warnings for each Product both on the Product label in accordance with Section 2.4, and by including either the warning or a clearly marked hyperlink using the word “WARNING” on the product display page, or by otherwise prominently displaying the warning to the purchaser prior to completing the purchase and without requiring the purchaser to search for the warning in the general content of the website. If Synergee sells Products directly to consumers with e-commerce websites, Synergee shall inform those customers in writing of their obligation to provide online warnings consistent with Title 27 California Code of Regulations § 25602(b). The internet warning may use the Short-Form Warning content described in Section 2.3(b) if the warning provided on the Product label also uses the Short-Form Warning content.

2.6 Customer Notification for Products Sold

No later than the Effective Date, Synergee shall send a letter, electronic or otherwise (“Notification Letter”) to: (1) each customer in California to which it sold Products between March 3, 2020 and March 3, 2021; and (2) any retailer or distributor Synergee reasonably understands or believes has any inventory of Products, which Synergee supplied between March 3, 2018 and March 3, 2021, for sale to consumers in California. The Notification Letter shall advise the recipient that the Products contain DEHP, a chemical known to the State of California to cause birth defects or other reproductive harm. The Notification letter shall inform the recipient (1) all Products must have a label attached to the packaging of each Product expressly referring to the Product, which contains one of the warning statements in Section 2.3 (a)-(1), before it is sold in the California market or to a customer in California, and (2) each warning must be prominently placed with such conspicuousness as compared with other words, statements, designs, or devices as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies.

1 **3. MONETARY SETTLEMENT TERMS**

2 **3.1 Civil Penalty**

3 Pursuant to Health and Safety Code § 25249.7(b), Synergee agrees to pay a civil penalty of
4 \$3,500 within five (5) days of the Effective Date. Synergee's civil penalty payment will be allocated
5 according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent (75%) of the
6 penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and
7 the remaining twenty-five percent (25%) retained by KASB. Synergee shall issue its payment in two
8 checks made payable to: (a) "OEHHA" in the amount of \$2,625; and (b) "Keep America Safe and
9 Beautiful" in the amount of \$875. KASB's counsel shall deliver to OEHHA and KASB their
10 respective portions of the penalty payment.

11 **3.3 Reimbursement of Attorneys' Fees and Costs**

12 KASB and its counsel offered to resolve the allegations in the Notice and Complaint without
13 reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the
14 Parties finalized the other material settlement terms, they negotiated and reached an accord on the
15 amount of reimbursement to be paid to KASB's counsel, under general contract principles and the
16 private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all
17 work performed through the mutual execution and reporting of this Consent Judgment to the Office
18 of the California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees
19 and costs on appeal, if any. Within five (5) days of the Effective Date, Synergee shall issue two
20 check for a total amount of \$28,500, with one check in the amount of \$555 payable to "Seven Hills
21 in trust for Keep America Safe and Beautiful" for case costs and a second check in the amount of
22 \$27,945 payable to "Seven Hills LLP" for all fees and other costs incurred investigating, bringing
23 this matter to Synergee's attention, litigating, negotiating a settlement in the public interest,
24 obtaining the Court's approval of its terms pursuant to Section 5, and reporting to the California
25 Attorney General.

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1 **3.3 Payments**

2 All payments payable and due under this Consent Judgment shall be delivered to KASB's
3 counsel at the following address:

4 Seven Hills LLP
5 Attn: Laralei Paras
6 4 Embarcadero Center, Suite 1400
7 San Francisco, CA 94111

7 **4. CLAIMS COVERED AND RELEASED**

8 **4.1 KASB's Release of Proposition 65 Claims**

9 This Consent Judgment is a full, final, and binding resolution of the claims that were or could
10 have been asserted by KASB arising out of the allegations in the Notice and in the Complaint.
11 KASB, acting on its own behalf, in the public interest, and on behalf of its past and current agents,
12 representatives, attorneys, successors and assignees ("**Releasors**") releases Synergee, its past and
13 present parents, subsidiaries, affiliated entities under common ownership, directors, officers,
14 employees, attorneys, and each entity to whom Synergee directly or indirectly distributes or sells the
15 Products including, but not limited to, Amazon.com, Inc., its downstream distributors, wholesalers,
16 marketplace hosts, customers, retailers, franchisees, cooperative members, and licensees
17 ("**Releasees**") from all claims for violations of Proposition 65 based on the failure to provide a clear
18 and reasonable warning about alleged exposures to DEHP contained in the Products that were
19 manufactured, processed, distributed, sold and/or offered for sale in California before the Effective
20 Date, as set forth in the Notice and Complaint. The Parties further agree that compliance with
21 Section 2 of this Consent Judgment shall be deemed compliance with Proposition 65 with respect to
22 alleged exposures to DEHP in the Products.

23 **4.2 Synergee's Release of KASB**

24 Synergee, on behalf of itself, its past and current agents, representatives, attorneys, successors,
25 and assignees, hereby waives any and all claims against KASB, its attorneys and other representatives,
26 for any and all actions taken or statements made (or those that could have been taken or made) by
27 KASB and its attorneys and other representatives, whether in the course of investigating claims or
28 otherwise seeking to enforce Proposition 65 against him in this matter with respect to the Products.

1 The Parties further understand and agree Section 4 releases shall not extend upstream to any
2 entities who sold, supplied, or manufactured the Products, or any component parts thereof, to
3 Synergee. Nothing in these Section 4 releases shall affect KASB's right to commence or prosecute
4 an action under Proposition 65 against a Releasee that does not involve Synergee's Products.

5 **5. COURT APPROVAL**

6 Pursuant to California Health and Safety Code § 25249.7(f)(4), KASB shall file a noticed
7 motion for judicial approval of this Consent Judgment. The Parties agree to mutually employ their
8 best efforts, and those of their counsel, to support the entry of a judgment pursuant to the terms of this
9 Consent Judgment, and to judicial approval of their settlement in a timely manner. For purposes of
10 this section, "best efforts" shall include, at a minimum, supporting the motion for approval,
11 responding to any third-party objection, and appearing at the hearing before the Court if so requested.

12 **6. SEVERABILITY**

13 If, subsequent to the Court's approval and entry of this Consent Judgment as a judgment, any
14 provision of this Consent Judgment is deemed by a court to be unenforceable, the validity of the
15 remaining provisions shall not be adversely affected.

16 **7. GOVERNING LAW**

17 The terms of this Consent Judgment shall be governed by the laws of the State of California
18 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise
19 rendered inapplicable by reason of law generally, or as to the Products, then Synergee may provide
20 KASB with written notice of any asserted change in the law, and shall have no further injunctive
21 obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the Products
22 are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Synergee from its
23 obligation to comply with any pertinent state or federal law or regulation.

24 **8. NOTICE**

25 Unless specified herein, all correspondence and notice required by this Consent Judgment
26 shall be in writing and sent by: (i) first-class registered or certified mail, return receipt requested; or
27 (ii) a recognized overnight courier to any Party by the other at the following addresses:
28

1 For Synergee:

2 Joey Huneau, President
3 Synergee Fitness Worldwide Inc.
4 931 Cobalt Crescent
Thunder Bay, ON P7B 5Z4

For KASB:

Laralei Paras, Partner
SEVEN HILLS LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

5 With a copy to:

6 Michael Strickland, Esq.
7 BUSET LLP
8 1121 Barton Street
Thunder Bay, ON P7B 5N3

9 Any Party may, from time to time, specify in writing to the other Party a change of address to which
10 all notices and other communications shall be sent.

11 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

12 This Consent Judgment may be executed in counterparts and by portable document format
13 (pdf) signature, each of which shall be deemed an original and, all of which, when taken together,
14 shall constitute one and the same document.

15 **10. COMPLIANCE WITH REPORTING REQUIREMENTS**

16 KASB and its counsel agree to comply with the reporting form requirements referenced in
17 California Health and Safety Code § 25249.7(f).

18 **11. ENTIRE AGREEMENT**

19 This Consent Judgment contains the sole and entire agreement and understanding of the
20 Parties with respect to the entire subject matter hereof, and any and all prior discussions,
21 negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and
22 therein. There are no warranties, representations, or other agreements between the Parties except as
23 expressly set forth herein. No representations, oral or otherwise, express or implied, other than those
24 specifically referred to in this Consent Judgment have been made by any Party hereto. No other
25 agreements not specifically contained or referenced herein, oral or otherwise, shall be deemed to
26 exist or to bind any of the Parties hereto.

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1 **12. MODIFICATION**

2 This Consent Judgment may be modified only by: (i) a written agreement of the Parties and
3 the entry of a modified Consent Judgment by the Court thereon; or (ii) upon a successful motion of
4 any party and the entry of a modified Consent Judgment by the Court thereon.

5 **13. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment on behalf of their
7 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
8 Consent Judgment.

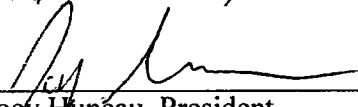
9 **AGREED TO:**

10 Date: 11/16/2022

11 By: 
12 Ngoc-Bich Hoang Vo, CEO
13 Keep America Safe and Beautiful

AGREED TO:

Date: Nov 15, 2022

By: 
Joey Huneau, President
Synergee Fitness Worldwide Inc.
dba Synergee USA