

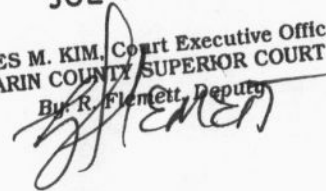
1 Gregory M. Sheffer, State Bar No. 173124
2 SHEFFER LAW FIRM
3 232 E. Blithedale Ave., Suite 210
4 Mill Valley, CA 94941
5 Telephone: 415.388.0911

6 Attorneys for Plaintiff
7 SUSAN DAVIA

FILED

JUL 12 2023

JAMES M. KIM, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: R. Flemett, Deputy



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 COMPASS HEALTH BRANDS CORP., 4MD
16 MEDICAL SOLUTIONS LLC AND DOES 1-
17 150,

18 Defendants.

Case No. CIV2104125

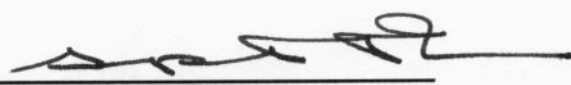
**JUDGMENT ON REVISED PROPOSITION
65 SETTLEMENT**

Action Filed: December 9, 2021
Trial Date: None Assigned

1 In the above-entitled action, plaintiff Susan Davia and defendant Compass Health Brands,
2 Corp., having agreed through their respective counsel that a judgment be entered pursuant to the
3 terms of the revised Consent to Judgment Settlement Agreement entered into by the parties in
4 resolution of this Proposition 65 action. Following the vacation of the January 24, 2023, Order
5 Approving Proposition 65 Settlement, vacation of the January 24, 2023, Judgment and issuance of
6 an Order approving the parties' revised Consent to Judgment Settlement Agreement on this day, IT
7 IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health & Safety Code §
8 25249.7(f)(4) and Code of Civil Procedure § 664.6, judgment is hereby entered in accordance with
9 the terms of the revised Consent to Judgment, attached hereto as Exhibit A.

10 IT IS SO ORDERED.

11 Dated: JUL 12, 2023



Honorable Stephen Freccero
Judge of the Superior Court

12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

EXHIBIT A

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

4 Attorneys for Plaintiff
SUSAN DAVIA

5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF MARIN
UNLIMITED CIVIL JURISDICTION

SUSAN DAVIA,
Plaintiff,

v.

COMPASS HEALTH BRANDS CORP., 4MD
MEDICAL SOLUTIONS LLC AND DOES 1-
150,
Defendants.

Case No. CIV2104125

**CONSENT TO JUDGMENT SETTLEMENT
AGREEMENT**

Action Filed: December 9, 2021
Trial Date: None Assigned

1 **1. INTRODUCTION**

2 **1.1 The Parties**

3 This consent to judgment settlement agreement (“Agreement” or “Settlement Agreement”)
4 is entered into by and between noticing party Susan Davia (“Davia”) and noticed party Compass
5 Health Brands (“Compass”), with Davia and Compass each referred to as a “Party” and collectively
6 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 Compass**

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

15 **1.4 General Allegations**

16 Davia alleges that Compass is responsible for the design, manufacture, distribution and/or
17 sale, in the State of California, of oxygen cylinder carry bags with vinyl windows that are alleged to
18 expose users to di(2-ethylhexyl)phthalate (“DEHP”) without first providing “clear and reasonable
19 warning” under Proposition 65. Pursuant to Proposition 65, DEHP is listed as a carcinogen and
20 reproductive toxin. DEHP shall be referred to hereinafter as the “Listed Chemical.”

21 **1.5 Notice of Violation**

22 On September 14, 2021, Davia served Compass and various public enforcement agencies with
23 a document entitled “60-Day Notice of Violation” that provided public enforcers and the noticed
24 entities with notice of alleged violations of Health & Safety Code § 25249.6 for failing to warn
25 consumers of the presence of DEHP found in the oxygen cylinder shoulder bag products with vinyl
26 windows sold in California (AG Notice 2021-02292). This September 14, 2021, Notice of Violation
27 shall hereafter be referred to as “Notice.” Compass represents that, as of the date it executes this
28

1 Agreement, it is not aware of any public enforcer that is diligently prosecuting a Proposition 65
2 enforcement action related to DEHP in the oxygen cylinder shoulder bag products as identified in
3 the Notice.

4 **1.6 Complaint**

5 On December 9, 2021, Davia filed a Complaint in the Superior Court of the State of California
6 for the County of Marin, Case No. CIV2104125, alleging violations by Defendants of Health and Safety
7 Code § 25249.6 based on the alleged exposures to DEHP in the Covered Products (the "Action").

8 **1.7 No Admission**

9 This Agreement resolves claims that are denied and disputed by Compass. The Parties enter
10 into this Agreement pursuant to a full and final settlement of any and all claims between the Parties
11 for the purpose of avoiding prolonged litigation. Compass denies the material factual and legal
12 allegations contained in the Notice, maintains that it did not knowingly or intentionally expose
13 California consumers to the Listed Chemical through the reasonably foreseeable use of the Covered
14 Products and otherwise contends that, all Covered Products it has manufactured, distributed and/or
15 sold in California have been and are in compliance with all applicable laws and regulations,
16 including Proposition 65. Nothing in this Agreement shall be construed as an admission by Compass
17 of any fact, finding, issue of law, or violation of law, nor shall compliance with this Agreement
18 constitute or be construed as an admission by Compass of any fact, finding, conclusion, issue of law,
19 or violation of law, such being specifically denied by Compass. However, notwithstanding the
20 foregoing, this section shall not diminish or otherwise affect Compass' obligations, responsibilities,
21 and duties under this Agreement.

22 **1.8 Consent to Jurisdiction**

23 For purposes of this Agreement only, the Parties stipulate that the Marin County Superior
24 Court has jurisdiction over Compass as to this Agreement, that venue for any action to enforce this
25 Agreement is proper in County of Marin, that this Agreement shall be construed as made pursuant
26 to Code of Civil Procedure Section 664.6 and the Marin County Superior Court shall be considered
27 to have jurisdiction to enforce the provisions of this Agreement until performance in full of the terms
28

1 of the settlement.

2 **2. DEFINITIONS**

3 **2.1** "Covered Product" shall mean all "Zephyr" or "Air Lift" branded oxygen cylinder
4 carry bags with vinyl windows containing DEHP distributed by Compass in California, including,
5 but not limited to, AirLift Comfort Shoulder Bag for D Cylinder (Model No. 32N), AirLift Comfort
6 Shoulder Bag for M9/C Cylinder (Model No. 34N) and Air Lift Shoulder Bag for M7 Cylinders
7 (Model No. 38N).

8 **2.2** "Phthalate Free" Covered Products shall mean any accessible component of any
9 Covered Product contains less than or equal to 1,000 parts per million ("ppm") of DEHP, DINP, di-
10 n-butyl phthalate ("DBP"), di-isodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP") or butyl
11 benzyl phthalate ("BBP") as determined by a minimum of duplicate quality controlled test results
12 using Environmental Protection Agency ("EPA") testing methodologies 3580A and 8270C or
13 equivalent methodologies utilized by federal or state agencies to determine the presence and
14 measure the quantity of phthalates in solid substances.

15 **2.3** "California Customer" means any direct customer of Compass with a California
16 ship to or billing address or any retail customer who Compass reasonably believes sells products
17 into California.

18 **2.4** "Effective Date" shall mean May 15, 2023.

19 **3. INJUNCTIVE-TYPE RELIEF**

20 **3.1 Products No Longer in Compass's Control**

21 No later than the Effective Date, Compass shall send a letter, electronic or otherwise
22 ("Notification Letter") to the manager for any retail California Customer to which Compass has
23 distributed or sold Covered Products since September 1, 2020, and which retail California Customer
24 Compass reasonably believes continues to maintain any inventory of Covered Products that are not
25 labelled with a clear and reasonable Proposition 65 warning equivalent to one of those in Section
26 3.3.. The Notification Letter shall advise the recipient that Covered Products "have been tested for
27 the presence of phthalates and found to contain DEHP, a chemical known to the State of California
28

1 to cause cancer and reproductive harm,” and request that the recipient either pull all Covered
2 Products from store displays and return its entire inventory of Covered Products to Compass or
3 label the Covered Products remaining in inventory for sale in or to California with a label that
4 complies with Section 3.3. The Notification Letter shall request a response from the recipient within
5 15 days, confirming that the letter was received. Compass shall maintain records of all
6 correspondence or other communications generated pursuant to this Section for two years after the
7 Effective Date and shall promptly produce copies of such records upon Davia’s written request.

8 **3.2 Product Reformulation Commitment**

9 **3.2.1** No later than the Effective Date, Compass shall provide the Phthalate Free
10 concentration standards of Section 2.2 to its then-current vendors or manufacturers of any Covered
11 Product and request such entities not to incorporate any raw or component materials that do not
12 meet the Phthalate Free concentration standards of Section 2.2 into any Covered Product or to supply
13 any Covered Product to Compass that is not Phthalate Free. For a period of two years after the
14 Effective Date, Compass shall maintain copies of all vendor correspondence relating to the Phthalate
15 Free concentration standards and shall produce such copies to Davia within fifteen (15) days of
16 receipt of written request from Davia, which request may be made no more than one time per
17 calendar year.

18 **3.2.2** After the Effective Date, Compass shall provide the Phthalate Free concentration
19 standards of Section 2.2 to any new vendors or manufacturers of any Covered Product and request
20 such entities not to incorporate any raw or component materials that do not meet the Phthalate Free
21 concentration standards of Section 2.2 into any Covered Product. Prior to purchase and acquisition
22 of any Covered Product from any new vendor, Compass shall obtain a laboratory test result from
23 the new vendor demonstrating compliance with the Phthalate Free concentration standard in all
24 materials comprising the Covered Product. For every Covered Product Compass manufactures,
25 causes to be manufactured, orders, causes to be ordered or otherwise obtains from a new vendor
26 after the Effective Date, Compass shall maintain copies of all testing of such products demonstrating
27 compliance with this section, shall maintain copies of all vendor correspondence relating to the
28

1 Phthalate Free concentration standards for two (2) years from the Effective Date. Compass shall
2 produce such copies to Davia within fifteen (15) business days of receipt of written request from
3 Davia, which request may be made no more than one time per calendar year.


4 **3.2.3** As of June 30, 2023, Compass shall not manufacture, cause to be manufactured,
5 purchase or otherwise obtain any Covered Product unless such Covered Product either meets the
6 Phthalate Free concentration standards of this Agreement or is made with components containing
7 no other Proposition 65 listed phthalate besides DEHP.

8 **3.3 Covered Product Warnings**


9 **3.3.1** As of the Effective Date, Compass shall not distribute, sell or ship, or cause to be
10 distributed, sold or shipped, any Covered Product to a California Customer unless such Covered
11 Product is either (1) confirmed to be Phthalate Free or (2) is made with components containing no
12 other Proposition 65 listed phthalate besides DEHP in concentrations above 1,000 ppm and is labelled
13 with a Covered Product warning pursuant to this section when sold or distributed in California.

14 Each such warning utilized by Compass for any Covered Product shall be prominently
15 placed either on the product, its labeling or its packaging with such conspicuousness as compared
16 with other words, statements, designs, or devices as to render it likely to be read and understood by
17 an ordinary individual under customary conditions *before* purchase or use.

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

21  **WARNING:** The vinyl materials of this product can
22 expose you to chemicals, including DEHP, that are
23 known to the State of California to cause cancer and birth
24 defects or other reproductive harm. For more
25 information go to www.P65Warnings.ca.gov.

26 or

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

3.4 Internet Ecommerce Covered Product Warnings

1 A warning must be given in conjunction with the sale, or offer of sale, by Compass of any
2 Covered Product not confirmed by Compass to be Phthalate Free via any ecommerce website owned,
3 operated, managed or controlled by Compass. A warning will satisfy this requirement if it appears
4 either: (a) on the same web page on which a Covered Product is displayed; (b) on the same web page
5 as the order form for a Covered Product; (c) on the same page as the price for any Covered Product;
6 or (d) on one or more web pages displayed to a purchaser during the checkout process. One of the
7 following warning statements shall be used and shall appear in any of the above instances adjacent
8 to or immediately following the display, description, or price of the Covered Product for which it is
9 given, or through a hyperlink using the word "WARNING", in the same type size or larger than the
10 Covered Product description text:___

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

15 Alternatively, the following "short form" warning may be used on the ecommerce website, but only
16 if the same warning language also appears on the product label or consumer packaging of the
17 Covered Product itself.

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

20 **4. MONETARY PAYMENTS**

21 **4.1 Civil Penalty**

22 As a condition of settlement of all the claims referred to in this agreement, Compass shall pay
23 a total of \$3,200 in civil penalties in accordance with California Health & Safety Code § 25249.12(c)(1)
24 & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard
25 Assessment ("OEHHA") and the remaining 25% of the penalty remitted to Davia.

26 **4.2 Augmentation of Penalty Payments**

27 For purposes of the penalty assessment under this Agreement, Davia is relying entirely upon
28

1 Compass for accurate, good faith reporting to Davia of the nature and amounts of relevant sales
2 activity. If within nine (9) months of the Effective Date, Davia discovers and presents evidence to
3 counsel for Compass that the Covered Products have been distributed in California in sales volumes
4 materially different (more than 25%) than those identified by Compass prior to execution of this
5 Agreement, and Compass does not provide Davia with competent and credible evidence to dispute
6 this claim, then Compass shall be liable for an additional penalty amount of \$10,000.00. Davia agrees
7 to provide counsel for Compass with a written demand for all such additional penalties and attorney
8 fees under this Section. After service of such demand, Compass shall have thirty (30) days to either
9 present evidence to counter this claim or to agree to the amount of fees and penalties owing by
10 Compass and submit such payment to Davia in accordance with the method of payment of penalties
11 and fees identified in Section 4.1 and 4.4. Should this thirty (30) day period pass without any such
12 resolution between the parties and payment of such additional penalties and fees, Davia shall be
13 entitled to file a formal legal claim for the additional civil penalties pursuant to this Section and the
14 prevailing party to such action shall be entitled to all reasonable attorney fees and costs relating to
15 such claim.

16 **4.3 Reimbursement of Davia's Fees and Costs**

17 The Parties acknowledge that Davia and her counsel offered to resolve this dispute without
18 reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving this fee
19 issue to be resolved after the material terms of the agreement had been settled. Compass expressed
20 a desire to resolve the fee and cost issue shortly after the other settlement terms had been finalized.
21 The Parties then attempted to (and did) reach an accord on the compensation due to Davia and her
22 counsel under general contract principles and the private attorney general doctrine codified at
23 California Code of Civil Procedure section 1021.5, for all work performed in this matter, except fees
24 that may be incurred on appeal. Under these legal principles, Compass shall pay Davia's counsel
25 the amount of \$28,500 for fees and costs incurred investigating, litigating and enforcing this matter.

26 **4.4 Payment Procedures**

27 No later than fifteen (15) days after execution of this Judgment, Compass shall deliver all
28

1 settlement payment funds required by this Judgment to its counsel. Within one (1) week of receipt of
2 the settlement funds, Compass' counsel shall confirm receipt in writing to plaintiff's counsel and,
3 thereafter, hold Compass' settlement payment checks or payment(s) until such time as the Court
4 approves this settlement as contemplated by Section 6. Within five (5) business days of the date
5 plaintiff provides electronic mail notice to counsel for Defendants that the Court has approved this
6 settlement, Compass' counsel shall deliver the settlement payments to plaintiff's counsel as follows:

7 a civil penalty check payable to "OEHHA" (EIN: 68-0284486, Memo line "Prop 65 Penalties,
8 2021-02292"), in the amount of \$2,400;

9 a civil penalty check payable to "Susan Davia" (Tax ID to be supplied, Memo line "Prop 65
10 Penalties, 2021-02292") in the amount of \$800;

11 an attorney fee and cost reimbursement check payable to "Sheffer Law Firm" (EIN 55-08-
12 58910, Memo line "2021-02292") in the amount of \$28,500.

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

15 Sheffer Law Firm
16 Attn: Proposition 65 Controller
17 232 E. Blithedale Avenue, Suite 210
18 Mill Valley, CA 94941

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

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

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

While the obligations of this agreement are binding upon execution, the Release of Compass
shall not become effective until after all monetary payments have been made by Compass and all

1 funds have cleared.

2 **4.5 Issuance of 1099 Forms**

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

5 (a) issued to the Office of Environmental Health Hazard Assessment, P.O. Box 4010,
6 Sacramento, CA 95814 (EIN: 68-0284486) in the amount paid pursuant to Sections 4.1 and
7 4.2;

8 (b) issued to Davia in the amount paid pursuant to Sections 4.1 and 4.2, whose address and
9 tax identification number shall be furnished upon request; and

10 (c) issued to the Sheffer Law Firm (EIN: 55-08-58910) in the amount paid pursuant to Section
11 4.2 and 4.3.

12 **5. RELEASES**

13 **5.1 DAVIA'S RELEASE OF COMPASS**

14 **5.1.1** Plaintiff acting on her own behalf and in the public interest releases Compass, 4MD
15 Medical Solutions, LLC, and each of their directors, officers, employees, attorneys, agents, parents,
16 and subsidiaries ("Releasees") from all claims for violations of Proposition 65 up through the
17 Effective Date based on exposure to DEHP from the Covered Products as set forth in the Notice of
18 Violation. Compliance with the terms of this Consent Judgment constitutes compliance with
19 Proposition 65 with respect to exposures to DEHP from Covered Products as set forth in the Notice
20 of Violations.

21 **5.1.2** Davia also, in her individual capacity and on behalf of her past and current
22 representatives, agents, attorneys, successors and/or assigns, provides a general release herein
23 which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of
24 action, obligations, costs, expenses, attorneys' fees, damages, losses, claims, liabilities and demands
25 of Davia, of any nature, character or kind, known or unknown, suspected or unsuspected, arising
26 out of the subject matter of the Notice as to Covered Products manufactured, distributed or sold by
27 Compass or Releasees before the Effective Date. Davia acknowledges that she is familiar with section
28

1 1542 of the California civil code, which provides as follows:

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

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

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

21 **5.2 Compass's Release of Davia**

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

A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE
CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT

1 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
2 THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD
3 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH
4 THE DEBTOR OR RELEASING PARTY.

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

12 **6. COURT APPROVAL**

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

22 **7. SEVERABILITY**

23 If any of the provisions of this Agreement are found by a court to be unenforceable, the
24 validity of the enforceable provisions remaining, after express agreement of the Parties, shall not be
25 adversely affected, unless the Court finds that any unenforceable provision is not severable from the
26 remainder of the Agreement.

27 **8. GOVERNING LAW**

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

1 **9. NOTICES**

2 When any Party is entitled to receive any notice under this Agreement, the notice shall be
3 sent by certified mail or electronic mail to the following:

4 For Compass:

5 Kallie Booth, Chief Financial Officer
6 Compass Health Brands
6753 Engle Road
7 Middleburg Heights, OH 44130

8 With a copy to its counsel:

9 Chris M. Amantea, Esq.
10 Law Offices of Chris M. Amantea
7590 Fay Ave., Suite 520
11 La Jolla, CA 92037
camantea@ca-envirolaw.com

12 For Davia to:

13 Proposition 65 Coordinator
14 Sheffer Law Firm
232 E. Blithedale Ave., Suite 210
15 Mill Valley, CA 94941
gregs@sheffer-law.net

16 Any Party may modify the person and address to whom the notice is to be sent by sending
17 each other Party notice by certified mail and/or other verifiable form of written communication.

18 **10. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(F)**

19 Davia agrees to comply with the reporting form requirements referenced, in California
20 Health & Safety Code §25249.7(f).

21 **11. MODIFICATION**

22 This Agreement may be modified only by written agreement of the Parties.

23 **12. ENTIRE AGREEMENT**

24 This Agreement contains the sole and entire agreement and understanding of the Parties with
25 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

1 agreements not specifically referred to herein, oral or otherwise, shall be deemed to exist or to bind
2 any of the Parties. No supplementation, modification, waiver, or termination of this Agreement shall
3 be binding unless executed in writing by the Party to be bound. No waiver of any of the provisions
4 of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions whether
5 or not similar, nor shall such waiver constitute a continuing waiver.

6 **13. ATTORNEY'S FEES**

7 **13.1** Should either Party prevail on any motion, application for order to show cause or
8 other proceeding to enforce a violation of this Agreement, that Party shall be entitled to its reasonable
9 attorney fees and costs incurred as a result of such motion, order or application, consistent with
10 C.C.P. §§ 1021 and 1021.5.

11 **13.2** Except as otherwise specifically provided herein, each Party shall bear its own costs
12 and attorney's fees in connection with the Notice.

13 **13.3** Nothing in this Section shall preclude a Party from seeking an award of sanctions
14 pursuant to law.

15 **14. NEUTRAL CONSTRUCTION**

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

24 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

25 This Agreement may be executed in counterparts and by facsimile or portable document
26 format (PDF), each of which shall be deemed an original, and all of which, when taken together, shall
27 constitute one and the same document.

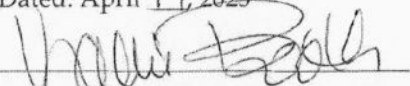
28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

16. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

IT IS SO AGREED

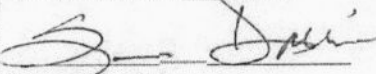
<p>Dated: April 17, 2023</p> <p></p> <p>Kallie Booth, Chief Financial Officer Compass Health Brands</p>	<p>Dated: April __, 2023</p> <p>_____</p> <p>Susan Davia</p>
----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	--------------------------------------------------------------

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

16. AUTHORIZATION

The undersigned are authorized to execute this Agreement on behalf of their respective Parties and have read, understood, and agree to all of the terms and conditions of this Agreement.

IT IS SO AGREED

<p>Dated: March __, 2023</p> <p>_____</p> <p>Stuart J. Straus, President & CEO Compass Health Brands</p>	<p>Dated: March ²³ __, 2023</p> <p> _____ Susan Davia</p>
------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------