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FILED
San Francisco County Superior Court

NOV 28 2023

CLERK OF THE COURT
BY: Christina Green
Deputy Clerk

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.

VIVE HEALTH LLC; and DOES 1-30,
inclusive,

Defendants.

Case No. CGC-22-599164

**[PROPOSED] JUDGMENT
PURSUANT TO TERMS OF
PROPOSITION 65 SETTLEMENT
AND CONSENT JUDGMENT**

Date: November 28, 2023
Time: 9:30 a.m.
Dept.: 302
Judge: Hon. Richard B. Ulmer, Jr.

Complaint Filed: April 12, 2022
Trial Date: None set.

1 In the above-entitled action, Plaintiff Keep America Safe and Beautiful and Defendant
2 Vive Health LLC, having agreed through their respective counsel that Judgment be entered
3 pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and
4 following this Court's issuance of an Order approving this Proposition 65 settlement and Consent
5 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: 11/28/23

 WJ
JUDGE OF THE SUPERIOR COURT
RICHARD B. ULMER

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EXHIBIT A

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9 Attorneys for Plaintiff
10 KEEP AMERICA SAFE AND BEAUTIFUL

11 Milord Keshishian, State Bar No. 197835
12 MILORD & ASSOCIATES, P.C.
13 333 S. Hope Street, Suite 4025
14 Los Angeles, CA 90071
15 Telephone: (310) 226-7879
16 milord@milordlaw.com

17 Attorneys for Defendant
18 VIVE HEALTH LLC

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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.
VIVE HEALTH LLC; and DOES 1-30,
inclusive,
Defendants.

Case No. CGC-22-599164

[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 Vive Health LLC (“Vive Health”), with KASB and Vive Health
4 each individually referred to as a “Party” and collectively, as the “Parties,” to resolve the allegations in
5 the December 22, 2021 60-Day Notice of Violation in compliance with the Safe Drinking Water and
6 Toxic Enforcement Act of 1986, Health & Safety Code § 25249.6 *et seq.* (“Proposition 65”).

7 **1.1 The Parties**

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

13 **1.2 Consumer Product Description**

14 KASB alleges that Vive Health manufactures, imports, sells, or distributes for sale in
15 California blood pressure monitors containing di(2ethylhexyl) phthalate (“DEHP”), including but not
16 limited to, *Vive Precision Sphygmomanometer, Product Code: DMD1013, UPC: 8 18323 02012 0,*
17 *ASIN: B01NBMG19W*, without providing the health hazard warning that KASB alleges is required by
18 California Health & Safety Code § 25249.5 *et seq.* (“Proposition 65”). Blood pressure monitors are
19 referred to hereinafter as the “Products.” DEHP is listed pursuant to Proposition 65 as a chemical
20 known to the State of California to cause birth defects or other reproductive harm.

21 **1.3 Notice of Violation**

22 On December 22, 2021, KASB served Vive Health, the California Attorney General, and the
23 requisite public enforcement agencies with a 60-Day Notice of Violation (“Notice”), alleging Vive
24 Health violated Proposition 65 by failing to warn its customers and consumers in California that the
25 Products can expose users to DEHP. No public enforcer has commenced and is diligently
26 prosecuting an action to enforce the allegations set forth in the Notice.

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1.4 Complaint

On April 12, 2022, KASB commenced the instant action (“**Complaint**”), naming Vive Health as a defendant for the alleged violations of Proposition 65 that are the subject of the Notice.

1.5 No Admission

This Consent Judgment resolves claims that are denied and disputed. The Parties enter into this Consent Judgment pursuant to a full and final settlement of any and all claims between the Parties for the purpose of avoiding prolonged litigation. Nothing in this Consent Judgment shall be construed as an admission by Vive Health of any material allegation in the Notice or the Complaint, or of any fact, conclusion of law, issue of law or violation of law of any kind, including without limitation, any admission concerning any alleged or actual violation of Proposition 65 or any other statutory, regulatory, common law, or equitable doctrine, including but not limited to the meaning of the terms “knowingly and intentionally expose” or “clear and reasonable warning” as used in Health and Safety Code section 25249.6. Nothing in this Consent Judgment, nor compliance with its terms, shall constitute or be construed as an admission by Vive Health of any fact, conclusion of law, issue of law, or violation of law, or of fault, wrongdoing, or liability by Vive Health, its officers, directors, employees, or parent, subsidiary or affiliated corporations, or be offered or admitted as evidence in any administrative or judicial proceeding or litigation in any court, agency, or forum. This section shall not, however, diminish or otherwise affect Vive Health’s obligations, responsibilities, and duties under this Consent Judgment.

1.6 Jurisdiction

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

1 **1.7 Execution Date**

2 The term "Execution Date" means the date all parties have signed this Consent Judgment.

3 **1.8 Effective Date**

4 The term "Effective Date" means the date on which the Court approves this Consent
5 Judgment and enters Judgment pursuant to its terms.

6 **2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS**

7 **2.1 Commitment to Reformulate or Warn**

8 Commencing on the Effective Date and continuing thereafter, all Products Vive Health
9 manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through
10 one or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard
11 for Reformulated Products, as defined by Section 2.2, or be accompanied by clear and reasonable
12 warnings pursuant to Section 2.3.

13 **2.2 Reformulation Standard**

14 For purposes of this Consent Judgment, "**Reformulated Products**" are defined as Products
15 which, if they contain di(2-ethylhexyl) phthalate ("**DEHP**") contain such chemical in a maximum
16 concentration of less than 0.1 percent (1,000 parts per million) when analyzed by a laboratory
17 accredited by the State of California, a federal agency, or a nationally recognized accrediting
18 organization. For purposes of compliance with this reformulation standard, testing samples shall be
19 prepared and extracted using Consumer Product Safety Commission ("**CPSC**") methodology CPSC
20 CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or
21 other methodologies utilized by federal or state government agencies to determine phthalate content
22 in a solid substance.

23 **2.3 Clear and Reasonable Warnings**

24 Vive Health shall provide clear and reasonable warnings for all Products provided for sale to
25 customers in California in accordance with this Section pursuant to Title 27 California Code of
26 Regulations § 25600, *et seq.* Each warning shall be prominently placed with such conspicuousness as
27 compared with other words, statements, or designs as to render it likely to be read and understood by
28

1 an ordinary individual under customary conditions before purchase or use and shall be provided in a
2 manner such that it is clearly associated with the specific Product to which the warning applies.

3 (a) **Warning.** The Warning shall consist of the following statement:

4 **⚠WARNING:** This product can expose you to di(2-ethylhexyl) phthalate (DEHP), which is
5 known to the State of California to cause cancer and birth defects or other reproductive harm.
6 For more information go to www.P65Warnings.ca.gov.

7 (b) **Short-Form Warning.** Vive Health may, but is not required to, use the following
8 short- form warning in lieu of the warning set forth in subsection 2.3(a) subject to the additional
9 requirements in Sections 2.3 and 2.4:

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

11 (c) **Foreign Language Requirement**

12 Where a consumer product sign, label or shelf tag used to provide a warning includes
13 consumer information, as that term is defined in Title 27 California Code of Regulations § 25600.1(c)
14 (“Consumer Information”), in languages other than English, the warning must also be provided in
15 those languages in addition to English.

16 2.4 Product Warnings

17 Vive Health shall affix a warning to the Product label or otherwise directly on each Product
18 provided for sale to consumers located in California and to customers with retail outlets in California
19 or nationwide distribution. For the purpose of this Consent Judgment, “**Product label**” means a
20 display of written, printed or graphic material that is printed on or affixed to each of a Product or its
21 immediate container or wrapper. A warning provided pursuant to Section 2.3(a) or (b) must print the
22 word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the
23 word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black
24 outline, except that if the labeling does not use the color yellow, then the symbol may be in black and
25 white. The entire warning shall appear in a type size of at least 6-point type and no smaller than the
26 largest type size used for other Consumer Information on the Products.

1 **2.5 Internet Warnings**

2 If, after the Effective Date, Vive Health sells Products, that are not Reformulated Products,
3 via the internet, through its own website, affiliated websites or a third party website, to consumers
4 located in California or to customers with nationwide distribution or e-commerce websites, Vive
5 Health shall provide warnings for the Products both on the Product label, in accordance with Section
6 2.4, and by including either the warning or a clearly marked hyperlink using the word “**WARNING**”
7 on the product display page, or by otherwise prominently displaying the warning to the purchaser
8 prior to completing the purchase. A warning is not prominently displayed if the purchaser must
9 search for it in the general content of the website. Where Vive Health sells, ships, or distributes
10 Products, that are not Reformulated Products, to third-party retailers or e-commerce marketplaces,
11 Vive Health shall advise them of the internet Warning requirements under this Agreement as a
12 condition of sale of the Products.

13 **3. MONETARY SETTLEMENT TERMS**

14 **3.1 Civil Penalty**

15 Pursuant to Health and Safety Code § 25249.7(b), Vive Health agrees to pay a civil penalty of
16 \$3,500 within five (5) days of the Effective Date. Vive Health’s civil penalty payment will be
17 allocated according to Health and Safety Code § 25249.12(c)(1) and (d), with seventy-five percent
18 (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment
19 (“**OEHHA**”), and the remaining twenty-five percent (25%) retained by KASB. Vive Health shall
20 issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$2,625; and (b)
21 “**Seven Hills in Trust for KASB**” in the amount of \$875. KASB’s counsel shall deliver to **OEHHA**
22 and KASB their respective portions of the penalty payment.

23 **3.2 Reimbursement of Attorneys’ Fees and Costs**

24 KASB and its counsel offered to resolve the allegations in the Notice and Complaint without
25 reaching terms on the amount of reimbursement of attorneys’ fees and costs. Shortly after the
26 Parties finalized the other material settlement terms, they negotiated and reached an accord on the
27 amount of reimbursement to be paid to KASB’s counsel, under general contract principles and the
28 private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all

1 work performed through the mutual execution and reporting of this Consent Judgment to the Office
2 of the California Attorney General and entry of Judgment pursuant its terms, but exclusive of fees
3 and costs on appeal, if any. Within five (5) days of the Effective Date, Vive Health shall issue a
4 check in the amount of \$24,900 payable to "Seven Hills LLP" for all fees and other costs incurred
5 investigating, bringing this matter to Vive Health's attention, litigating, negotiating a settlement in
6 the public interest, obtaining the Court's approval of its terms pursuant to Section 5, and reporting to
7 the California Attorney General.

8 **3.3 Payments**

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

11 Seven Hills LLP
12 Attn: Laralei Paras
13 4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

14 **4. CLAIMS COVERED AND RELEASED**

15 **4.1 KASB's Release of Proposition 65 Claims**

16 This Consent Judgment is a full, final, and binding resolution of the claims that were or could
17 have been asserted by KASB arising out of the allegations in the Notice and in the Complaint.
18 KASB, acting on its own behalf, in the public interest, and on behalf of its past and current agents,
19 representatives, attorneys, successors and assignees ("**Releasors**") releases Vive Health, its past and
20 present owners, shareholders, divisions, related companies, parents, subsidiaries, affiliates, sister
21 companies, directors, officers, employees, attorneys, and each entity to whom Vive Health directly
22 or indirectly distributes or sells the Products including, but not limited to, Amazon.com, Inc. and its
23 downstream distributors, Vive Health's downstream distributors, wholesalers, marketplace hosts,
24 customers, retailers, franchisees, cooperative members, and licensees, and the successors and assigns
25 of any of them ("**Releasees**") based on the failure to provide a clear and reasonable warning under
26 Proposition 65 about alleged exposures to DEHP contained in the Products that were manufactured,
27 processed, distributed, sold and/or offered for sale in California before the Effective Date, as set
28 forth in the Notice and Complaint. The Parties further agree that compliance with Section 2 of this

1 Consent Judgment shall be deemed compliance with Proposition 65 with respect to alleged
2 exposures to DEHP in the Products.

3 The Parties understand and agree this Section 4.1 release shall not extend (a) to upstream
4 entities that sold, supplied, or manufactured the Products or any component parts thereof, or any
5 distributors or suppliers who sold the Products or any component parts thereof to Vive Health nor (b)
6 to Releasees who have been instructed by Vive Health, pursuant to Section 2.5, to provide a warning
7 on Products that are not Reformulated Products and have failed to do so.

8 **4.2 KASB's Individual Release of Claims**

9 KASB, in its individual capacity only and not in its representative capacity, also hereby
10 provides a release to Vive Health and the Releasees which shall be effective as a full and final accord
11 and satisfaction, as a bar to all actions, causes of actions, obligations, costs, expenses, attorneys' fees,
12 damages, losses, claims, liabilities and demands of KASB of any nature, character, or kind arising out
13 of alleged or actual exposures to DEHP in Products manufactured, imported, sold or distributed for
14 sale, in or into the State of California, by Vive Health prior to the Execution Date, as alleged in the
15 Notice and Complaint. The Parties understand and agree that this Section 4.2 release shall not extend
16 upstream to any entities that sold, supplied or manufactured the Products or any component parts
17 thereof to Vive Health. Nothing in this section shall affect KASB's right to commence or prosecute
18 an action under Proposition 65 against a Releasee that does not involve Vive Health's Products.

19 **4.3 Vive Health's Release of KASB**

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

1 **4.4 Mutual Waiver of California Civil Code § 1542**

2 It is possible that other claims not known to the Parties arising out of the facts alleged in
3 the Notice and relating to the Products will develop or be discovered. Except as provided in Section
4 4.1, KASB, on behalf of itself and its agents, attorneys, representatives, successors, and assigns, in its
5 respective individual capacity only and not in its representative capacity, and Vive Health, on behalf
6 of itself and its agents, attorneys, representatives, successors, and assigns, acknowledge that this
7 Agreement is expressly intended to cover and include all such claims up through the Effective Date,
8 including all rights of action therefor. The Parties waive California Civil Code § 1542 as to any such
9 unknown claims. California Civil Code § 1542 reads as follows:

10 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR
11 RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT
12 THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD
13 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR
14 RELEASED PARTY.

15 **5. COURT APPROVAL**

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

22 **6. SEVERABILITY**

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

26 **7. GOVERNING LAW**

27 The terms of this Consent Judgment shall be governed by the laws of the State of California
28 and apply within California. In the event that Proposition 65 is repealed, preempted, or is otherwise

1 rendered inapplicable by reason of law generally, or as to the Products, then Vive Health may
2 provide KASB with written notice of any asserted change in the law, and shall have no further
3 injunctive obligations pursuant to this Consent Judgment, with respect to, and to the extent that, the
4 Products are so affected. Nothing in this Consent Judgment shall be interpreted to relieve Vive
5 Health from its obligation to comply with any pertinent state or federal law or regulation.

6 **8. SERVICE ON THE ATTORNEY GENERAL**

7 KASB shall serve a copy of this Consent Judgment, signed by both parties, on the California
8 Attorney General so that the Attorney General may review this Consent Judgment prior to its
9 submittal to the Court for approval. The hearing on KASB's motion to approve this Consent
10 Judgment shall be no sooner than forty-five (45) days after the Attorney General has received the
11 aforementioned copy of this Consent Judgment.

12 **9. NOTICE**

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

16 For Vive Health:

17 Milord Keshishian, Esq.
18 Milord & Associates, P.C.
19 333 S. Hope Street, Suite 4025
20 Los Angeles, CA 90071

For KASB:

Laralei Paras, Partner
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111

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

23 **10. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

27 **11. COMPLIANCE WITH REPORTING REQUIREMENTS**

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

1 **12. ENTIRE AGREEMENT**

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

10 **13. MODIFICATION**

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

14 **14. AUTHORIZATION**

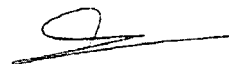
15 The undersigned are authorized to execute this Consent Judgment on behalf of their
16 respective Parties and have read, understood, and agreed to all of the terms and conditions of this
17 Consent Judgment.

18 **AGREED TO:**

AGREED TO:

19
20 Date: 10/10/2023

Date: 10/7/2023

21 By: 
22 My Nguyen, CFO
23 Keep America Safe and Beautiful

By: 
Matthew Fleming, CEO
Vive Health LLC

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