

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Keep America Safe & Beautiful (“**KASB**”) and Alex Orthopedic, Inc. (“**Alex Orthopedic**”), with KASB and Alex Orthopedic each individually referred to as a “**Party**” and collectively, as the “**Parties.**” KASB is a California-based non-profit organization proceeding in the public interest pursuant to California Health & Safety Code § 25249.7(d) to ensure that chemicals known to the State of California to cause cancer, birth defects or other reproductive harm are disclosed in or eliminated from consumer products sold in California. Alex Orthopedic is a person in the course of doing business for purposes of California Health & Safety Code § 25249.11(b).

1.2 Consumer Product Description

KASB alleges that Alex Orthopedic manufactures, imports, sells and distributes for sale in California canes with vinyl handles containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, Alex Canes Aluminum Cane, Tourist Adj. Cane Silver, MP-21034, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code §§ 25249.5 *et seq.* (“**Proposition 65**”). Canes with vinyl handles are referred to hereinafter as the “**Products.**” **DEHP** is listed pursuant to Proposition 65 as a chemical known to the State of California to cause birth defects and other reproductive harm.

1.3 Notice of Violation

On November 18, 2020, KASB served Alex Orthopedic, the California Attorney General and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging Alex Orthopedic violated Proposition 65 by failing to warn its customers and consumers in California that its Products can expose users to DEHP. No public enforcer has commenced and is diligently prosecuting an action to enforce the allegations in the Notice.

1.4 No Admission

Alex Orthopedic denies the material, factual, and legal allegations contained in the Notice, and maintains that all products it has sold or distributed for sale in California, including the Products, have been, and are, in compliance with all laws. Nothing in this Agreement shall constituted or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by Alex Orthopedic of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect Alex Orthopedic' obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, “**Effective Date**” shall mean March 10, 2021.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Reformulation Commitment

Commencing on the Effective Date and continuing thereafter, all Products Alex Orthopedic manufactures, imports, sells, ships, or distributes for sale in or into California, directly or through one or more third party retailers or e-commerce marketplaces, shall meet the Reformulation Standard for Reformulated Products, as defined by Section 2.2.

2.2 Reformulation Standard

For purposes of this Agreement, “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.

3. MONETARY SETTLEMENT TERMS

3.1 Initial Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), Alex Orthopedic agrees to pay a civil penalty of \$100 within five (5) business days of the Effective Date. Alex Orthopedic's civil penalty payment will be allocated according to Health and Safety Code §§ 25249.12(c)(1) and (d), with seventy-five percent (75%) of the penalty paid to the California Office of Environmental Health Hazard Assessment ("OEHHA"), and the remaining twenty-five percent (25%) retained by KASB. Alex Orthopedic shall issue its payment in two checks made payable to: (a) "OEHHA" in the amount of \$75; and (b) "Keep America Safe & Beautiful" in the amount of \$25. KASB's counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment.

3.2 Final Waivable Civil Penalty

Alex Orthopedic shall pay a second civil penalty of \$400. However, the second civil penalty shall be waived in its entirety, if, on or before March 31, 2021, an officer of Alex Orthopedic certifies, as of the Effective Date, it has discontinued the Products and, continuing thereafter, any and all Products manufactured or imported by Alex Orthopedic for sale to consumers in California would be Reformulated Products as defined by Section 2.2. Unless the second civil penalty is waived, on or before April 15, 2021, Alex Orthopedic shall issue a check made payable to "OEHHA" in the amount of \$300 and a check made payable to "Keep America Safe & Beautiful" in the amount of \$100.

3.3 Reimbursement of Attorneys' Fees and Costs

KASB and its counsel offered to resolve the allegations in the Notice without reaching terms on the amount of reimbursement of attorneys' fees and costs. Shortly after the Parties finalized the other material settlement terms, they negotiated and reached an accord on the amount of reimbursement to be paid to KASB's counsel, under general contract principles and

the private attorney general doctrine, codified at California Code of Civil Procedure § 1021.5, for all work performed through the mutual execution and reporting of this Agreement to the Office of the California Attorney General. On or before March 31, 2021, and on or before April 30, 2021, Alex Orthopedic agrees to issue separate checks each in the amount of \$5,000 payable to “Seven Hills LLP” for a total amount of \$10,000 in reimbursement for all fees and costs incurred investigating, bringing this matter to Alex Orthopedic’s attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9. For amounts due and owing under this Section received more than ten (10) days after the issuance due date, simple interest shall accrue at a rate of 10%.

3.4 Payments

All payments payable and due under this Agreement shall be delivered to KASB’s counsel at following address:

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

4. CLAIMS COVERED AND RELEASED

4.1 KASB’s Release of Alex Orthopedic

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and Alex Orthopedic, of any violation of Proposition 65 that was or could have been asserted by KASB on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, against Alex Orthopedic, its parents, subsidiaries, affiliated entities under common ownership, directors, officers, employees, attorneys, and each entity to whom Alex Orthopedic directly or indirectly distributes or sells Products, including, but not limited, to downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees (collectively, “**Releasees**”), based on their failure to warn about alleged exposures to DEHP, DBP, DINP, BBP, DIDP or DnHP

contained in the Products that were manufactured, distributed, sold and/or offered for sale by Alex Orthopedic in California before the Effective Date, as alleged in the Notice.

In further consideration of the promises and agreements herein contained, KASB as an individual and *not* on behalf of the public, on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees, hereby waives all of KASB's rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims that KASB may have, including, without limitation, all actions, and causes of action, in law or in equity, suits, liabilities, demands, obligations, damages, costs, fines, penalties, losses, or expenses including, but not exclusively, investigation fees, expert fees, and attorneys' fees arising under Proposition 65 with respect to DEHP, DBP, DINP, BBP, DIDP or DnHP in the Products manufactured, distributed, sold and/or offered for sale by Alex Orthopedic, before the Effective Date (collectively, "**Claims**"), against Alex Orthopedic and Releasees.

The Parties further understand and agree that this Section 4.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to Alex Orthopedic. Nothing in this Section affects KASB's right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve Alex Orthopedic's Products.

4.1.a Deemed Compliance with Proposition 65

The Parties agree that compliance by Alex Orthopedic with this Agreement constitutes compliance with Proposition 65 with respect to exposure to DEHP from use of the Products.

4.1.b Public Benefit

It is Alex Orthopedic's understanding that the commitments it has agreed to herein, and actions to be taken by Alex Orthopedic under this Settlement Agreement, would confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of Alex Orthopedic that to the extent any other private party initiates an action alleging a violation of Proposition 65 with respect to Alex Orthopedic's failure to provide a warning concerning exposure to DEHP, DBP, DINP, BBP,

DIDP or DnHP prior to use of the Products it has manufactured, distributed, sold, or offered for sale in California, or will manufacture, distribute, sell, or offer for sale in California, such private party action would not confer a significant benefit on the general public as to those Products addressed in this Agreement, provided that Alex Orthopedic is in material compliance with this Agreement.

4.2 Alex Orthopedic's Release of KASB

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

5. SEVERABILITY

If, subsequent to the execution of this Agreement, any provision of this Agreement is deemed by a court to be unenforceable, the validity of the remaining provisions shall not be adversely affected.

6. GOVERNING LAW

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

7. NOTICE

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

For Alex Orthopedic:

Ivan Tether
TETHER LAW
860 Via de la Paz, Suite E-3D
Pacific Palisades, CA 90272
<ivan@tetherlaw.com>

For KASB:

Laralei Paras
Seven Hills LLP
4 Embarcadero Center, Suite 1400
San Francisco, CA 94111
<laralei@sevenhillsllp.com>

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

8. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES

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

9. COMPLIANCE WITH REPORTING REQUIREMENTS

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

10. ENTIRE AGREEMENT

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

11. **MODIFICATION**

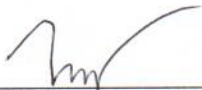
This Agreement may be modified only by a written agreement of the Parties.

12. **AUTHORIZATION**

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

AGREED TO:

Date: 02/22/2021

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

AGREED TO:

Date: _____

By: _____
Ebrahim Lavi, President/CEO
Alex Orthopedic, Inc.

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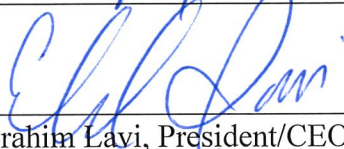
AGREED TO:

Date: _____

By: _____
Ngoc-Bich Hoang Vo, CEO
Keep America Safe and Beautiful

AGREED TO:

Date: 2/22/2021

By:  _____
Ebrahim Lavi, President/CEO
Alex Orthopedic, Inc.