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

Attorneys for Plaintiff  
SUSAN DAVIA

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

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  
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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

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](http://www.P65Warnings.ca.gov).

26 or

27  **WARNING:** Cancer and Reproductive Harm. -  
28 [www.P65Warnings.ca.gov](http://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](http://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](http://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  
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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  
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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  
7 6753 Engle Road  
8 Middleburg Heights, OH 44130

8 With a copy to its counsel:

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

12 For Davia to:

13 Proposition 65 Coordinator  
14 Sheffer Law Firm  
15 232 E. Blithedale Ave., Suite 210  
16 Mill Valley, CA 94941  
17 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  
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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.

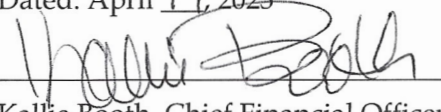
24 **15. COUNTERPARTS, FACSIMILE SIGNATURES**

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.

1 **16. AUTHORIZATION**

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

4 **IT IS SO AGREED**

<p>5</p> <p>6 Dated: April 17, 2023</p> <p>7 </p> <p>8 Kallie Booth, Chief Financial Officer Compass Health Brands</p> <p>9</p>	<p>Dated: April __, 2023</p> <p>_____</p> <p>Susan Davia</p>
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**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 &amp; CEO Compass Health Brands</p>	<p>Dated: March <sup>23</sup> __, 2023</p> <p> _____</p> <p>Susan Davia</p>
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