

PROPOSITION 65 SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 The Parties

This Settlement Agreement (“**Agreement**”) is entered into by and between Keep America Safe and Beautiful (“**KASB**”) and ManaMed, LLC (“**ManaMed**”), with KASB and ManaMed each individually referred to as a “**Party**” and, collectively, 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. ManaMed 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 ManaMed manufactures, imports, sells, and distributes for sale in California therapeutic ice packs with vinyl components containing di(2-ethylhexyl) phthalate (“**DEHP**”) including, but not limited to, *ManaEZ Ankle Ice, Part No: EZANKLE01, Lot: 220198, Sugg. HCPC: L1902*, without providing the health hazard warning that KASB alleges is required by California Health & Safety Code § 25249.5 *et seq.* (“**Proposition 65**”). Therapeutic ice packs with vinyl components are referred to hereinafter as the “**Product(s).**” DEHP is listed pursuant to Proposition 65 as a chemical known to the State of California to cause cancer and birth defects or other reproductive harm.

1.3 Notice of Violation

On September 23, 2024, KASB served ManaMed, the California Attorney General, and the requisite public enforcement agencies with a 60-Day Notice of Violation (“**Notice**”), alleging ManaMed 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

ManaMed denies the 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 constitute or be construed as, nor shall compliance with this Agreement constitute or be construed as, an admission by ManaMed of any fact, finding, conclusion of law, issue of law, or violation of law. This section shall not, however, diminish or otherwise affect ManaMed's obligations, responsibilities, and duties under this Agreement.

1.5 Effective Date

For purposes of this Agreement, "**Effective Date**" shall mean the date this Agreement is fully executed by all Parties.

2. INJUNCTIVE RELIEF: REFORMULATION OR WARNINGS

2.1 Commitment to Reformulate or Warn

Commencing on the Effective Date and continuing thereafter, all Products ManaMed 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 or be accompanied by a clear and reasonable warning pursuant to Section 2.3.

2.2 Reformulation Standard

For purposes of this Agreement, "Reformulated Products" are defined as Products which, if they contain di(2-ethylhexyl) phthalate ("DEHP"), contain such chemical in a maximum concentration of less than 0.1 percent (1,000 parts per million) when analyzed by a laboratory certified or accredited by the State of California, the United States Food and Drug Administration/Environmental Protection Agency, the National Environmental Laboratory Accreditation Program, or a member accreditation body of the International Laboratory Accreditation Cooperation. For purposes of compliance with this reformulation standard, testing samples shall be prepared and extracted using Consumer Product Safety Commission


(“CPSC”) methodology CPSC-CH-C1001.09.3 and analyzed using U.S. Environmental Protection Agency methodology 8270D, or other methodologies utilized by federal or state government agencies to determine phthalate content in a solid substance.

2.3 Clear and Reasonable Warnings

Commencing on or before the Effective Date, ManaMed shall provide clear and reasonable warnings for all Products, that are not Reformulated Products, provided for sale to customers in or into California in accordance with this Section pursuant to Title 27 California Code of Regulations § 25600, et seq. ManaMed shall provide one of the following warning statements, pursuant to Cal. Code Regs. tit. 27 § 25603, as it exists as of the date of execution of this Agreement, or as it may be amended in the future.


(a) Warnings

Option 1:

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


OR

Option 2:

 **WARNING** [or] **CA WARNING** [or] **CALIFORNIA WARNING:** Risk of cancer and reproductive harm from exposure to di(2-ethylhexyl) phthalate (DEHP). See www.P65Warnings.ca.gov.


OR

Option 3:

 **WARNING** [or] **CA WARNING** [or] **CALIFORNIA WARNING:** Can expose you to di(2-ethylhexyl) phthalate (DEHP), a carcinogen and reproductive toxicant. See www.P65Warnings.ca.gov.

OR

Option 4: The following warning statement may be used on Products manufactured and labeled prior to January 1, 2028:

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

Each warning shall be prominently placed with such conspicuousness as compared with other words, statements, or designs as to render it likely to be read and understood by an ordinary individual under customary conditions before purchase or use and shall be provided in a manner such that it is clearly associated with the specific Product to which the warning applies. If regulations or legislation are enacted providing that Proposition 65 warnings as to DEHP in the Products are no longer required, or a court of competent jurisdiction issues an order holding that Proposition 65 warnings for DEHP in the Products are no longer required, a lack of warning by ManaMed for any Product will not thereafter be a breach of this Agreement.

(b) Foreign Language Requirement. Where a consumer product sign, label or shelf tag used to provide a warning includes consumer information in language(s) other than English, the warning must also be provided in the other language(s) in addition to English.

(c) Product Warnings

ManaMed shall affix a warning to the Product label or otherwise directly on all Products, that are not Reformulated Products, provided for sale to consumers located in California or to downstream entities who sell in or into California, such as customers with retail outlets in California or nationwide distribution. For the purpose of this agreement, “**Product label**” means a display of written, printed or graphic material printed on or affixed to each of the Products or its immediate container or wrapper. A warning provided pursuant to section 2.3(a) must print the word “**WARNING:**” in all capital letters and in bold font. The warning symbol to the left of the word “**WARNING:**” must be a black exclamation point in a yellow equilateral triangle with a black outline, except if the labeling does not use the color yellow, the symbol may be in black and white. The entire warning shall appear in at least 6-point type.

(d) Internet Warnings

If, after the Effective Date, ManaMed sells Products, that are not Reformulated Products, via the internet, through its own website, affiliated websites or a third party website,

to consumers located in California or to customers with nationwide distribution and e-commerce websites whom ManaMed knows sells Products into California, ManaMed shall provide warnings for each Product both on the Product label in accordance with Section 2.3(c), and by prominently displaying, or requiring the warning to be prominently displayed on affiliated websites, third party websites or by retail customers, to the consumer during the purchase of the Products without requiring customers to seek out the warning. The warning or a clearly marked hyperlink to the warning using the word “**WARNING**” given in conjunction with the sale of the Products via the internet shall appear either: (a) on the same web page on which the Products are displayed; (b) on the same web page as the virtual cart displaying the Products; (c) on the same page as the price for the Products; or (d) on one or more web pages displayed to a purchaser during the checkout process. The warning shall appear in any of the above instances adjacent to or immediately following the display, description, or price of the Products. If the on-Product Warning is one of the warning statements set forth in Options 2-4 in Section 2.3, the Internet Warning may use the corresponding warning statement. Where ManaMed sells, ships, or distributes Products to third-party retailers or e-commerce marketplaces, ManaMed will advise them of the internet Warning requirements under this Agreement as a condition of sale of the Products.

3. MONETARY SETTLEMENT TERMS

3.1 Civil Penalty

Pursuant to Health and Safety Code § 25249.7(b), ManaMed agrees to pay a civil penalty of \$1,500 within five (5) business days of the Effective Date. ManaMed’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. ManaMed shall issue its payment in two checks made payable to: (a) “**OEHHA**” in the amount of \$1,125; and (b) “**Seven Hills LLP in Trust for Keep America Safe and Beautiful**” in

the amount of \$375. KASB's counsel shall deliver to OEHHA and KASB their respective portion of the penalty payment.

3.2 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. Within five (5) business days of the Effective Date, ManaMed agrees to issue a check in the amount of \$17,000 payable to "Seven Hills LLP" for all fees and costs incurred investigating, bringing this matter to ManaMed's attention, negotiating a settlement in the public interest, and reporting its terms to Office of the California Attorney General pursuant to Section 9.

3.3 Payments

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

Seven Hills LLP
Attn: Kimberly Gates Johnson
1 Embarcadero Center, Suite 1200
San Francisco, CA 94111

4. CLAIMS COVERED AND RELEASED

4.1 KASB's Release of ManaMed

This Agreement is a full, final and binding resolution between KASB, as an individual and *not* on behalf of the public, and ManaMed, 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 ManaMed and each entity to whom ManaMed 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 under Proposition 65 about alleged exposures to DEHP contained in the Products that were manufactured, distributed, sold and/or offered for sale by ManaMed in California before the Effective Date, as alleged in the Notice. Products in the stream of commerce specifically include, but are not limited to, Products in the process of manufacture as of the Effective Date. ManaMed may demonstrate that a unit of a Product was already in the stream of commerce as of the Effective Date with information including, but not limited to, lot codes and all information demonstrating the date of manufacture.

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 in the Products manufactured, distributed, sold and/or offered for sale by ManaMed, before the Effective Date (collectively, “**Claims**”), against ManaMed and Releasees.

The Parties further understand and agree that this Section 4.1 release shall neither extend (a) 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 ManaMed, nor (b) to Releasees who have been instructed by ManaMed pursuant to Sections 2.3(d) to provide a warning on Products that are not Reformulated Products and have failed to do so. Nothing in this Section affects KASB’s right to commence or prosecute an action under Proposition 65 against a Releasee that does not involve ManaMed’s Products.

4.2 ManaMed’s Release of KASB

ManaMed, 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.

4.3 Mutual Waiver of California Civil Code Section 1542

It is possible that other claims not known to the Parties arising out of the facts alleged in the Notice and relating to the Products will develop or be discovered. KASB on behalf of itself only, on one hand, and ManaMed on behalf of itself only, on the other hand, acknowledge that this Settlement Agreement is expressly intended to cover and include all such claims up through the Effective Date. The Parties acknowledge that the claims released in Sections 4.1 and 4.2 may include unknown claims, and nevertheless waive California Civil Code section 1542 as to any such unknown claims. California Civil Code section 1542 reads as follows:

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

KASB and ManaMed each acknowledge and understand the significance and consequences of this specific waiver of California Civil Code § 1542.

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. Nothing in this Agreement shall be interpreted to relieve ManaMed 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; or (ii) a recognized overnight courier to any Party by the other at the following addresses:

For ManaMed:

David Barnes, Esq.
Hogan Lovells US LLP
4 Embarcadero Center, Suite 3500
San Francisco, 94111

For KASB:

Kimberly Gates Johnson, Partner
Seven Hills LLP
1 Embarcadero Center, Suite 1200
San Francisco, CA 94111

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: 7/03/2025

By: 
Lance Nguyen, CEO
Keep America Safe and Beautiful

AGREED TO:

07/02/2025
Date: _____

By: 
Trevor Theriot, CEO
ManaMed, LLC