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County of San Diego
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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN DIEGO
UNLIMITED CIVIL JURISDICTION

KEEP AMERICA SAFE AND BEAUTIFUL)	CASE NO.: 37-2022-00015487-CU-NP-CTL
Plaintiff,)	COMPLAINT FOR CIVIL PENALTIES AND INJUNCTIVE RELIEF
VS.)	<i>(Cal. Health & Safety Code § 25249.6 et seq.)</i>
AMG MEDICAL, INC)	
AND)	
DOES 1-25 INCLUSIVE)	
DEFENDANTS.)	

NATURE OF THE ACTION

1. This Complaint is a representative action brought by Plaintiff Keep America Safe and Beautiful, in the public interest of the citizens of the State of California, to enforce the people’s right to be informed of the dangers from exposures to DINP (Diisononyl Phthalate) (hereafter “Listed Chemical”) toxic chemical when using the “Medpro Durable Home Sitz Bath with Tubing and Water Bag” sold by DEFENDANTS in California.

1 **FIRST CAUSE OF ACTION**

2 **(Violation of Proposition 65 – Against Defendant)**

3 15. Plaintiff realleges and incorporates by reference, as if full reference, as if fully set
4 forth herein, Paragraphs 1 through 14, inclusive.

5 16. The citizens of the State of California have expressly stated in the Safe Drinking
6 Water and Toxic Enforcement Act of 1986, California Health & Safety Code § 25249.5, et seq.
7 (Proposition 65) that they must be informed “about exposures to chemicals that cause cancer,
8 birth defects and order reproductive harm.” (*Cal. Health & Safety Code § 25249.6.*)

9 17. Proposition 65 states, “No person in the course of doing business shall knowingly
10 and intentionally expose any individual to a chemical known to the state to cause cancer or
11 productive toxicity without first giving clear and reasonable warning to such individual...
12 (*Id.*)”

13 18. On May 21, 2021 a sixty-day notice violation, together with the requisite
14 certificate of merit, was provided to DEFENDANTS, and various public enforcement agencies
15 stating that as a result of the DEFENDANTS’ sales of the PRODUCTS, purchasers and users in
16 the State of California were being exposed to the LISTED CHEMICAL resulting from the
17 reasonably foreseeable use of the PRODUCTS, without the individual purchasers and users first
18 having been provided with a “clear and reasonable warning” regarding such toxic exposures.

19 19. DEFENDANTS have engaged in the manufacture, distribution and/or offering of
20 the PRODUCTS for sale or use in violation of California Health & Safety Code § 25249.6 and
21 DEFENDANTS’ manufacture, distribution and/or offering of the PRODUCTS for sale or use in
22 violation of California Health & Safety Code § 25249.6 has continued to occur beyond
23 DEFENDANTS’ receipt of plaintiff’s sixty-day notice of violation. Plaintiff further alleges and
24 believes that such violations will continue to occur into the future.

25 20. After receipt of the claims asserted in the sixty-day notices of violation, the
26 appropriate public enforcement agencies have failed to commence and diligently prosecute a
27 cause of action against DEFENDANTS under Proposition 65.
28

1 21. The PRODUCTS manufactured, distributed, and/or offered for sale or use in
2 California by DEFENDANTS contained the LISTED CHEMICAL above the allowable state
3 limits.

4 22. DEFENDANTS knew or should have known that the PRODUCTS manufactured,
5 distributed, and/or for sale or use by DEFENDANTS in California contained the LISTED
6 CHEMICAL.

7 23. The PRODUCTS, through normal use exposes users to the LISTED CHEMICAL
8 in such a way as to expose individuals to the LISTED CHEMICAL through inhalation, dermal
9 contact and/or ingestion during the reasonably foreseeable use of the PRODUCTS.

10 24. The normal and reasonably foreseeable use of the PRODUCTS has caused and
11 continues to cause consumer exposures to the LISTED CHEMICAL, as such exposure is defined
12 by 27 CCR§ 25602(b).

13 25. DEFENDANTS had knowledge that the normal and reasonably foreseeable use of
14 the PRODUCTS would expose individuals to the LISTED CHEMICAL..

15 26. DEFENDANTS intended that such exposures to the LISTED CHEMICAL from
16 the reasonably foreseeable use of the PRODUCTS would occur by their deliberate, non-
17 accidental participation in the manufacture, distribution and/or offer for sale or use of
18 PRODUCTS to individuals in the State of California.

19 27. DEFENDANTS failed to provide a “clear and reasonable warning” to those
20 consumers and/or other individuals in the State of California who were or who could become
21 exposed to the LISTED CHEMICAL during the reasonably foreseeable use of the PRODUCTS.

22 28. Contrary to the express policy and statutory prohibition of Proposition 65, enacted
23 directly by California voters, individuals exposed to the LISTED CHEMICAL resulting from the
24 reasonably foreseeable use of the PRODUCTS, sold by DEFENDENTS without a “clear and
25 reasonable warning,” have suffered, and continue to suffer, irreparable harm, for which harm
26 they have no plain, speedy or adequate remedy at law.
27
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