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3 Attorneys for Plaintiff Keep America Safe and Beautiful  
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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF SAN DIEGO

10 KEEP AMERICA SAFE AND BEAUTIFUL,

11 Plaintiff,

12 v.

13 A.M.G. MEDICAL INC

14 and

15 DOES 1-25,

16 Defendants.  
17  
18  
19

Case No. 37-2022-00015487-CU-NP-CTL

**STIPULATION FOR ENTRY OF  
SETTLEMENT AGREEMENT AND  
CONSENT JUDGMENT AS TO  
DEFENDANT A.M.G. MEDICAL  
INC.**

20 **1. INTRODUCTION**

21 1.1 **The Parties.** This Settlement Agreement and Consent Judgment (“Consent  
22 Judgment”) is entered into by and between Plaintiff Keep America Safe and Beautiful (“KASAB”)  
23 acting on behalf of the public interest (hereinafter “KASAB”), and Defendant A.M.G. Medical Inc.  
24 (“AMG”), with KASAB and AMG collectively referred to as the “Parties” and each of them as a  
25 “Party.” KASAB is a California Nonprofit Corporation seeking to promote awareness of exposures  
26 to toxic chemicals and improve human health by reducing or eliminating hazardous substances  
27 contained in consumer products. For purposes of this Consent Judgment only, AMG is a person in  
28

1 the course of doing business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6  
2 *et seq.*

3 1.2 **Allegations and Representations.** KASAB alleges that AMG has offered for sale  
4 in the State of California and has sold in California, the “Medpro Durable Home Sitz Bath with  
5 Tubing and Water Bag” that contains Diisononyl Phthalate (“DINP”), and that such sales have not  
6 been accompanied by Proposition 65 warnings. DINP is listed under Proposition 65 as chemicals  
7 known to the State of California to cause cancer.

8 1.3 **Notices of Violation/Complaint.** On or about May 21, 2021 KASAB served AMG,  
9 Amazon.com, Inc., Amazon.com Services, Inc., and various public enforcement agencies with a  
10 document entitled "60-Day Notice of Violation" pursuant to Health & Safety Code §25249.7(d) (the  
11 "Notice"), alleging that AMG, Amazon.com, Inc., and Amazon.com Services, Inc. were in violation  
12 of Proposition 65 for failing to warn consumers and customers that the “Medpro Durable Home Sitz  
13 Bath with Tubing and Water Bag” exposed users in California to DINP. No public enforcer  
14 diligently prosecuted the claims threatened in the Notice within sixty days plus service time relative  
15 to the provision of the Notice to them by KASAB.

16 1.4 For purposes of this Consent Judgment only, the Parties stipulate that this Court has  
17 jurisdiction over AMG as to the allegations contained in the complaint filed in this matter, that  
18 venue is proper in the County of San Diego, and that this Court has jurisdiction to approve, enter,  
19 and oversee the enforcement of this Consent Judgment as a full and final binding resolution of all  
20 claims which were or could have been raised in the Complaint based on the facts alleged therein  
21 and/or in the Notices.

22 1.5 AMG denies the material allegations contained in KASAB’s Notice and Complaint  
23 and maintains that it has not violated Proposition 65 or any other applicable laws or regulations.  
24 Nothing in this Consent Judgment shall be construed as an admission by AMG of any fact, finding,  
25 issue of law, or violation of law; nor shall compliance with this Consent Judgment constitute or be  
26 construed as an admission by AMG of any fact, finding, conclusion, issue of law, or violation of  
27 law, such being specifically denied by AMG. However, this section shall not diminish or otherwise  
28 effect the obligations, responsibilities, and duties of AMG under this Consent Judgment.

1     **2.     DEFINITIONS**

2             **2.1     Complaint.** The term “Complaint” shall have the meaning given in Section 1.3 and  
3 the complaint filed in this action.

4             **2.2     Covered Product.** The term “Covered Product” means the “Medpro Durable Home  
5 Sitz Bath with Tubing and Water Bag” designed, manufactured, sold, distributed or otherwise made  
6 available by AMG.

7             **2.3     Effective Date.** The term “Effective Date” shall mean the date this Consent Judgment  
8 is approved and entered as a judgment of the Court.

9             **2.4     Listed Chemicals:** The term “Listed Chemicals” shall mean DINP.

10            **2.5     Reformulated Product:** A Covered Product is a Reformulated Product if it  
11 contains no more than 1000 ppm DINP in each accessible component when analyzed in a  
12 reasonable testing program using any testing methodology selected by AMG that is acceptable to  
13 federal or state agencies for the purpose of determining the DINP content in a solid substance, and  
14 suitable for the material being tested. “Accessible component” means a component of an intact  
15 Covered Product that can be touched by a consumer during intended and reasonable consumer use  
16 of the product.

17            **2.6     Notice.** The term “Notice” shall have the meaning given in Section 1.3.

18            **2.7     Releasees.** The terms “Defendant Releasees” and “Downstream Defendant  
19 Releasees” shall have the meanings given in Section 5.1.

20     **3.     INJUNCTIVE RELIEF: WARNINGS**

21            **3.1** Covered Products that are not Reformulated Products shall be accompanied by a  
22 warning as described in Section 3.2 below, no later than 120 days after the Effective Date. The  
23 warning requirements set forth in this Consent Judgment shall apply only to Covered Products that  
24 are distributed, marketed, sold or shipped for sale by AMG in the State of California. The warning  
25 requirements shall not apply to products that are already in the stream of commerce as of the  
26 Effective Date or that AMG or any downstream distributor, reseller or marketplace places into the  
27 stream of commerce within 120 days of the Effective Date.

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1           3.2     Commencing 120 days after the Effective Date, AMG shall not sell, offer for sale, or  
2 ship for sale in California any Covered Product, unless the Covered Product is accompanied by the  
3 following on-product warning:



**WARNING:** Cancer and Reproductive Harm - [www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

5

6           **Or**



8           **WARNING:** The use of this product can expose you to DINP, which is a chemical  
9 known to the State of California to cause cancer. For more information go to  
[www.P65Warnings.ca.gov](http://www.P65Warnings.ca.gov).

10           3.3     The warning provided pursuant to Section 3.2 shall be affixed to or printed on the  
11 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed  
12 on the packaging or labeling, and displayed with such conspicuousness, as compared with other  
13 words, statements, or designs as to render it likely to be read and understood by an ordinary  
14 individual under customary conditions of purchase or use. A warning may be contained in the same  
15 section of the packaging or labeling that states instructions or other safety warnings, if any,  
16 concerning the use of the product and shall be at least the same size as those instructions or other  
17 safety warnings, but no less than 6 point font.

18           3.4     **Sell-Through Period.** Notwithstanding anything else in this Consent Judgment,  
19 Covered Products that are manufactured, packaged, or put into commerce within one hundred  
20 twenty (120) days of the Effective Date shall be subject to the release of liability pursuant to this  
21 Consent Judgment, without regard to when such Covered Products were, or are in the future,  
22 distributed or sold to customers in California without warnings, such that compliance with the  
23 warnings called for in the preceding paragraphs shall not be required for such products.

24           **4.     MONETARY TERMS**

25           4.1     **Civil Penalty.** AMG shall pay a civil penalty of \$100 pursuant to Health and Safety  
26 Code section 25249.7(b), to be apportioned in accordance with California Health & Safety Code §  
27 25192, with 75% of these funds remitted to the State of California's Office of Environmental  
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1 Health Hazard Assessment and the remaining 25% of the penalty remitted to KASAB, as provided  
2 by California Health & Safety Code § 25249.12(d). Such payment shall be made within 15 days of  
3 the Effective Date. KASAB's counsel shall be responsible for delivering OEHHA's portion of any  
4 civil penalty payment made under this Settlement Agreement and Consent Judgment.

5 4.2 **Attorney's Fees.** AMG agrees to pay reasonable attorney fees, inclusive of all  
6 expenses and costs, incurred as a result of investigating, bringing this matter to AMG's attention,  
7 litigating and negotiating, and obtaining judicial approval of a settlement in the public interest,  
8 pursuant to Code of Civil Procedure section 1021.5, in an amount of \$10,000. AMG shall wire  
9 KASAB's counsel the total sum of \$10,100 representing the civil penalty and attorney fees in  
10 Sections 4.1 and 4.2 within 15 days following the Effective Date and receipt of wire instruction  
11 information, and IRS W-9 forms from KASAB's counsel.

12 **5. RELEASE OF ALL CLAIMS**

13 5.1 This consent judgment is a full, final, and binding resolution between KASAB acting  
14 in the public interest, and AMG, its owners, investors employees, directors, officers, managers,  
15 attorneys, parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies,  
16 and affiliates, and their successors and assigns ("Defendant Releasees"), and all entities from whom  
17 they obtain and to whom they directly or indirectly distribute or sell Covered Products, including  
18 but not limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors,  
19 licensees, retailers, franchisees, marketplaces, and cooperative members, and their successors and  
20 assigns ("Downstream Defendant Releasees"). Upon full execution of this Consent Judgment, and  
21 subject to payment by AMG of the full settlement amount and compliance with the terms of this  
22 Consent Judgment, KASAB, on behalf of itself, it's agents, successors, heirs, and assigns, to the  
23 fullest extent permitted by law, hereby fully and irrevocably releases and discharges AMG, the  
24 Defendant Releasees, and the Downstream Defendant Releasees from all claims for violations of  
25 Proposition 65 that were, or which could have been, asserted in the Complaint based on exposure to  
26 and/or failure to warn about Listed Chemicals from Covered Products as set forth in the Notice,  
27 with respect to any Covered Products manufactured, distributed, or sold by AMG, the Defendant  
28 Releasees, and/or the Downstream Defendant Releasees prior to the Effective Date. Compliance

1 with the terms of this Consent Judgment constitutes compliance with Proposition 65 with regard to  
2 the Covered Products.

3 5.2 In addition to the foregoing, KASAB, on behalf of itself, its past and current agents,  
4 representatives, attorneys, and successors and/or assignees, and *not* in its representative capacity, to  
5 the fullest extent permitted by law, hereby waives all rights to institute or participate in, directly or  
6 indirectly, any form of legal action and releases AMG, Defendant Releasees, and Downstream  
7 Defendant Releasees from any and all manner of actions, causes of action, claims, demands, rights,  
8 suits, obligations, debts, contracts, agreements, promises, liabilities, damages, charges, losses, costs,  
9 expenses, and attorneys' fees, of any nature whatsoever, known or unknown, in law or equity, fixed  
10 or contingent, now or in the future, with respect to any alleged violations of Proposition 65 related  
11 to or arising from Covered Products manufactured distributed or sold by AMG or Defendant  
12 Releasees. With respect to the foregoing waivers and releases in this paragraph, KASAB hereby  
13 specifically waives any and all rights and benefits which KASAB now has, or in the future may  
14 have, conferred by virtue of the provisions of Section 1542 of the California Civil Code, which  
15 provides as follows:

16  
17 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR  
18 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR  
19 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY  
20 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH  
21 THE DEBTOR.

22 5.3 AMG waives any and all claims against KASAB, its attorneys and other  
23 representatives, for any and all actions taken or statements made (or those that could have been  
24 taken or made) by KASAB and its attorneys and other representatives, whether in the course of  
25 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,  
26 and/or with respect to Covered Products.

27 5.4 **No Other Known Claims or Violations.** KASAB and its counsel in this action  
28 affirm that they are not presently aware of any actual or alleged violations of Proposition 65 by  
AMG or attributable to AMG other than those that are fully resolved by this Consent Judgment.  
This Paragraph does not, however, provide a release for any unknown, actual or alleged violations

1 involving other substances and/or product categories, if any, nor does it limit or expand the scope of  
2 the release provided in this Consent Judgment for Covered Products.

3 **6. INTEGRATION**

4 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and any  
5 and all prior negotiations and understandings related hereto shall be deemed to have been merged  
6 within it. No representations or terms of agreement other than those contained herein exist or have  
7 been made by any Party with respect to the other Party or the subject matter hereof.

8 **7. GOVERNING LAW**

9 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of  
10 California and apply within the State of California. In the event that Proposition 65 is repealed or is  
11 otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then AMG  
12 shall provide written notice to KASAB of any asserted change in the law, and shall have no further  
13 obligations pursuant to this Consent Judgment with respect to, and to the extent that, Covered  
14 Products are so affected.

15 **8. ENFORCEMENT**

16 8.1 KASAB may, by motion or application for an order to show cause before the  
17 Superior Court of San Diego County, enforce the terms and conditions contained in this Consent  
18 Judgment. Prior to bringing any motion or application to enforce the requirements of this Consent  
19 Judgment, KASAB shall provide AMG with a proposed Notice of Violation, and a copy of any  
20 documentary evidence which purportedly supports KASAB's Notice of Violation. The Parties shall  
21 then meet and confer in good faith for a period of at least sixty (60) days regarding the basis for  
22 KASAB's anticipated motion or application in an attempt to resolve it informally. Should such  
23 attempts at informal resolution fail, KASAB may file its enforcement motion or application. This  
24 Consent Judgment may only be enforced by the Parties.

25 **9. NOTICES**

26 9.1 Unless specified herein, all correspondence and notices required to be provided  
27 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-  
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1 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by  
2 the other party at the following addresses:

3 For AMG:

4 Paul S. Rosenlund, Esq.  
5 Duane Morris LLP  
6 Spear Tower  
7 One Market Plaza, Suite 2200  
8 San Francisco, CA 94105-1127

8 And

9 For KASAB:

10 Stephanie Sy, Esq.  
11 Law Office of Stephanie Sy  
12 11622 El Camino Real, Suite 100  
13 San Diego, CA 92130

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

16 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

17 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of  
18 which shall be deemed an original, and all of which, when taken together, shall constitute one and  
19 the same document.

20 **11. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)/COURT**  
21 **APPROVAL**

22 11.1 KASAB agrees to comply with the requirements set forth in California Health &  
23 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment  
24 and AMG agrees it shall support approval of such Motion.

25 11.2 This Consent Judgment shall not be effective until it is approved and entered by the  
26 Court and shall be null and void if, for any reason, it is not approved and entered by the Court  
27 within eighteen months after it has been fully executed by the Parties. In such a scenario, the  
28 Parties agree to meet and confer on how to proceed and if such agreement is not reached within 30-



1 days, any monies that have been paid pursuant to Section 4 shall be refunded and the case shall  
2 proceed on its normal course.

3 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an  
4 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent  
5 Judgment. If the Parties do not jointly agree on a course of action to take, any monies that have  
6 been paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the trial court,  
7 and the case shall proceed on its normal course on the trial court's calendar.

8 **12. MODIFICATION**

9 12.1 This Consent Judgment may be modified only by express written agreement of the  
10 Parties and the approval of the Court or upon the granting of a motion brought to the Court by either  
11 Party.

12 12.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to  
13 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

14 **13. ATTORNEY'S FEES**

15 13.1 A party who unsuccessfully brings or contests an action arising out of this Consent  
16 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless  
17 the unsuccessful party has acted with substantial justification. For purposes of this Consent  
18 Judgment, the term substantial justification shall carry the same meaning as used in the Civil  
19 Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

20 13.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its  
21 own attorneys' fees and costs.

22 13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions  
23 pursuant to law.



24 **14. RETENTION OF JURISDICTION**

25 14.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent  
26 Judgment.



1 **15. AUTHORIZATION**

2 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their  
3 respective Parties and have read, understood and agree to all of the terms and conditions of this  
4 document and certifies that he or she is fully authorized by the Party he or she represents to execute  
5 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as  
6 explicitly provided herein each Party is to bear its own fees and costs.

7  
8 **APPROVED AS TO FORM:**

9 10 11 12 13 14 15	AGREED TO: Date : <u>May 12</u> , 2023  By: <u></u> On Behalf of KASAB Stephanie Sy Law Offices of Stephanie Sy	AGREED TO: Date: <u>May 9, 2023</u> , 2023  By: <u></u> On Behalf of A.M.G. Medical Inc. Paul S. Rosenlund Duane Morris LLP
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16  
17 **IT IS HEREBY SO STIPULATED:**

18 19 20 21 22 23	AGREED TO: Date : <u>May,09</u> , 2023  By: <u></u> My Nguyen- COO Keep America Safe and Beautiful (KASAB)	AGREED TO: Date: <u>May 9</u> , 2023  By: <u></u> Janick Coulombe A.M.G. Medical Inc. (AMG)
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24  
25 **IT IS SO ORDERED, ADJUDGED AND DECREED:**

26  
27 Dated: \_\_\_\_\_ Judge of the Superior Court