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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 AMG 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
CONSENT JUDGMENT AS TO
DEFENDANT AMG MEDICAL, INC**

20
21 **1. INTRODUCTION**

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

1 products. For purposes of this Consent Judgment only, AMG is a person in the course of doing
2 business for purposes of Proposition 65, Cal. Health & Safety Code §§ 25249.6 *et seq.*

3 1.2 **Allegations and Representations.** KASAB alleges that AMG has offered for sale in
4 the State of California and has sold in California, the “Medpro Durable Home Sitz Bath with Tubing
5 and Water Bag” that contains Diisononyl Phthalate (“DINP”), and that such sales have not been
6 accompanied by Proposition 65 warnings. DINP is listed under Proposition 65 as chemicals known
7 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 venue
18 is proper in the County of San Diego, and that this Court has jurisdiction to approve, enter, and
19 oversee the enforcement of this Consent Judgment as a full and final binding resolution of all claims
20 which were or could have been raised in the Complaint based on the facts alleged therein and/or in
21 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. Nothing in this Consent Judgment shall be
24 construed as an admission by AMG of any fact, finding, issue of law, or violation of law; nor shall
25 compliance with this Consent Judgment constitute or be construed as an admission by AMG of any
26 fact, finding, conclusion, issue of law, or violation of law, such being specifically denied by AMG.

1 However, this section shall not diminish or otherwise effect the obligations, responsibilities, and
2 duties of AMG under this Consent Judgment.

3 **2. DEFINITIONS**

4 2.1 **Complaint.** The term “Complaint” shall have the meaning given in Section 1.3.

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

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

10 2.4 **Listed Chemicals:** The term “Listed Chemicals” shall mean DINP.

11 2.5 **Reformulated Product:** A Covered Product is a Reformulated Product containing
12 no more than 1000 ppm DINP in each accessible component when analyzed in a reasonable testing
13 program using any testing methodology selected by AMG that is acceptable to federal or state
14 agencies for the purpose of determining the DINP content in a solid substance, and suitable for the
15 material being tested. “Accessible component” means a component of an intact Covered Product
16 that can be touched by a consumer during intended and reasonable consumer use 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 2.8 **Execution Date.** The term “Execution Date” shall mean the date this Consent
21 Judgment is signed by the parties

22 **3. INJUNCTIVE RELIEF: WARNINGS**

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

1 Effective Date or that AMG or any downstream distributor, reseller or marketplace places into the
2 stream of commerce within 120 days of the Effective Date.

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



7 **WARNING:** Cancer - www.P65Warnings.ca.gov.

9 **Or**



11 **WARNING:** This product can expose you to Diisononyl phthalate (DINP) a
12 chemical known to the State of California to cause cancer. For more
13 information go to www.P65Warnings.ca.gov.

14 3.3 The warning provided pursuant to Section 3.2.2 shall be affixed to or printed on the
15 Covered Product's packaging or labeling. The warning shall be prominently affixed to or printed on
16 the packaging or labeling, and displayed with such conspicuousness, as compared with other words,
17 statements, or designs as to render it likely to be read and understood by an ordinary individual
18 under customary conditions of purchase or use. A warning may be contained in the same section of
19 the packaging or labeling that states other safety warnings, if any, concerning the use of the product
20 and shall be at least the same size as those other safety warnings, but no less than 6 point font.

21 3.4 **Internet Warning.** In addition, for all products that AMG offers for sale directly to
22 consumers in California via websites under the exclusive control of AMG, AMG shall provide a
23 warning for such Products by including the warning set forth above in § 3.2 on one or more of the
24 following: (a) on the same web page on which a Covered Product is displayed; (b) on the same web
25 page as the order form for a covered product; (c) on the same web page as the price for any covered
26 product; or (d) on one or more web pages displayed to a purchaser during the checkout process. The
27 internet warning described above can also be delivered through a hyperlink using the words
28 "[California Prop 65] WARNING."

1 3.5 **Sell-Through Period.** Notwithstanding anything else in this Consent Judgment,
2 Covered Products that are manufactured, packaged, or put into commerce within one hundred twenty
3 (120) days of the Effective Date shall be subject to the release of liability pursuant to this Consent
4 Judgment, without regard to when such Covered Products were, or are in the future, distributed or
5 sold to customers, such that compliance with the warnings called for in the preceding paragraphs
6 shall not be required for such products.

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8 **4. MONETARY TERMS**

9 4.1 **Civil Penalty.** AMG shall pay a civil penalty of \$1,000.00 pursuant to Health and
10 Safety Code section 25249.7(b), to be apportioned in accordance with California Health & Safety
11 Code § 25192, with 75% of these funds remitted to the State of California’s Office of Environmental
12 Health Hazard Assessment and the remaining 25% of the penalty remitted to KASAB, as provided
13 by California Health & Safety Code § 25249.12(d). Such payment shall be made within 15 days of
14 the Effective Date. KASAB’s counsel shall be responsible for delivering OEHHA’s portion of any
15 civil penalty payment made under this Settlement Agreement and Consent Judgment.

16 4.2 **Attorney’s Fees.** AMG agrees to pay reasonable attorney fees, inclusive of all
17 expenses and costs incurred as a result of investigating, bringing this matter to AMG’s attention,
18 litigating and negotiating and obtaining judicial approval of a settlement in the public interest,
19 pursuant to Code of Civil Procedure section 1021.5, in an amount of \$9,100.00. AMG shall wire
20 KASAB’s counsel the total sum of \$10,100.00 representing the civil penalty and attorney fees in
21 Sections 4.1 and 4.2 within 15 days following the Effective Date, and wire instruction information
22 from KASAB’s counsel.

23 4.3 KASAB shall provide IRS W-9 forms for any payments to be made by AMG.

24 **5. RELEASE OF ALL CLAIMS**

25 5.1 This consent judgment is a full, final, and binding resolution between KASAB acting
26 in the public interest, and AMG, its owners, investors employees, directors, officers, managers,
27 attorneys, parents, shareholders, divisions, subdivisions, subsidiaries, partners, sister companies, and
28 affiliates, and their successors and assigns (“Defendant Releasees”), and all entities from whom they

1 obtain and to whom they directly or indirectly distribute or sell Covered Products, including but not
2 limited to manufacturers, suppliers, distributors, wholesalers, customers, licensors, licensees,
3 retailers, franchisees, marketplaces, and cooperative members, and their successors and assigns
4 (“Downstream Defendant Releasees”). Upon full execution of this Consent Judgment, and subject to
5 payment by AMG of the full settlement amount and compliance with the terms of this Consent
6 Judgment, KASAB, on behalf of itself, it’s agents, successors, heirs, and assigns, to the fullest extent
7 permitted by law, hereby fully and irrevocably releases and discharges AMG, the Defendant
8 Releasees, and the Downstream Defendant Releasees from all claims for violations of Proposition 65
9 that were, or which could have been, asserted in the Complaint based on exposure to and/or failure
10 to warn about Listed Chemicals from Covered Products as set forth in the Notice, with respect to any
11 Covered Products manufactured, distributed, or sold by AMG, the Defendant Releasees, and/or the
12 Downstream Defendant Releasees prior to the Effective Date. Compliance with the terms of this
13 Consent Judgment constitutes compliance with Proposition 65 with regard to the Covered Products.

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

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27 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR
28 DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR
 AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY

1 HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH
2 THE DEBTOR.

3 5.3 AMG waives any and all claims against KASAB, its attorneys and other
4 representatives, for any and all actions taken or statements made (or those that could have been taken
5 or made) by KASAB and its attorneys and other representatives, whether in the course of
6 investigating claims or otherwise seeking enforcement of Proposition 65 against it in this matter,
7 and/or with respect to Covered Products.

8 5.4 **No Other Known Claims or Violations.** KASAB and its counsel in this action
9 affirm that they are not presently aware of any actual or alleged violations of Proposition 65 by
10 AMG or attributable to AMG other than those that are fully resolved by this Consent Judgment. This
11 paragraph does not, however, provide a release for any unknown, actual or alleged violations
12 involving other substances and/or product categories, if any, nor does it limit or expand the scope of
13 the release provided in this Consent Judgment for Covered Products.

14 **6. INTEGRATION**

15 6.1 This Consent Judgment contains the sole and entire agreement of the Parties and any
16 and all prior negotiations and understandings related hereto shall be deemed to have been merged
17 within it. No representations or terms of agreement other than those contained herein exist or have
18 been made by any Party with respect to the other Party or the subject matter hereof.

19 **7. GOVERNING LAW**

20 7.1 The terms of this Consent Judgment shall be governed by the laws of the State of
21 California and apply within the State of California. In the event that Proposition 65 is repealed or is
22 otherwise rendered inapplicable by reason of law generally, or as to Covered Products, then AMG
23 shall provide written notice to KASAB of any asserted change in the law, and shall have no further
24 obligations pursuant to this Consent Judgment with respect to, and to the extent that, Covered
25 Products are so affected.

26 **8. ENFORCEMENT**

27 8.1 KASAB may, by motion or application for an order to show cause before the
28 Superior Court of San Diego County, enforce the terms and conditions contained in this Consent
20170623

1 Judgment. Prior to bringing any motion or application to enforce the requirements of this Consent
2 Judgment, KASAB shall provide AMG with a proposed Notice of Violation, and a copy of any
3 documentary evidence which purportedly supports KASAB's Notice of Violation. The Parties shall
4 then meet and confer in good faith for a period of at least sixty (60) days regarding the basis for
5 KASAB's anticipated motion or application in an attempt to resolve it informally. Should such
6 attempts at informal resolution fail, KASAB may file its enforcement motion or application. This
7 Consent Judgment may only be enforced by the Parties.

8 **9. NOTICES**

9 9.1 Unless specified herein, all correspondence and notices required to be provided
10 pursuant to this Consent Judgment shall be in writing and personally delivered or sent by: (i) first-
11 class, (registered or certified mail) return receipt requested; or (ii) overnight courier on any party by
12 the other party at the following addresses:

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14 For AMG:

15 Paul S. Rosenlund, Esq.
16 Duane Morris LLP
17 Spear Tower
18 One Market Plaza, Suite 2200
19 San Francisco, CA 94105-1127

20 And

21 For KASAB:

22 Stephanie Sy, Esq.
23 Law Office of Stephanie Sy
24 11622 El Camino Real, Suite 100
25 San Diego, CA 92130

26 Any party, from time to time, may specify in writing to the other party a change of address to which
27 all notices and other communications shall be sent.
28

1 **10. COUNTERPARTS; FACSIMILE SIGNATURES**

2 10.1 This Consent Judgment may be executed in counterparts and by facsimile, each of
3 which shall be deemed an original, and all of which, when taken together, shall constitute one and
4 the same document.

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

7 11.1 KASAB agrees to comply with the requirements set forth in California Health &
8 Safety Code §25249.7(f) and to promptly bring a Motion for Approval of this Consent Judgment and
9 AMG agrees it shall support approval of such Motion.

10 11.2 This Consent Judgment shall not be effective until it is approved and entered by the
11 Court and shall be null and void if, for any reason, it is not approved and entered by the Court within
12 eighteen months after it has been fully executed by the Parties. In such a scenario, the Parties agree
13 to meet and confer on how to proceed and if such agreement is not reached within 30-days, any
14 monies that have been paid pursuant to Section 4 shall be refunded and the case shall proceed on its
15 normal course.

16 11.3 If the Court approves this Consent Judgment and is reversed or vacated by an
17 appellate court, the Parties shall meet and confer as to whether to modify the terms of this Consent
18 Judgment. If the Parties do not jointly agree on a course of action to take, any monies that have been
19 paid pursuant to Section 4 shall be refunded within 15 days after remittitur to the trial court, and the
20 case shall proceed on its normal course on the trial court's calendar.

21 **12. MODIFICATION**

22 12.1 This Consent Judgment may be modified only by express written agreement of the
23 Parties and the approval of the Court or upon the granting of a motion brought to the Court by either
24 Party.

25 12.2 Any Party seeking to modify this Consent Judgment shall attempt in good faith to
26 meet and confer with the other Party prior to filing a motion to modify the Consent Judgment.

1 **13. ATTORNEY'S FEES**

2 13.1 A party who unsuccessfully brings or contests an action arising out of this Consent
3 Judgment shall be required to pay the prevailing party's reasonable attorney's fees and costs unless
4 the unsuccessful party has acted with substantial justification. For purposes of this Consent
5 Judgment, the term substantial justification shall carry the same meaning as used in the Civil
6 Discovery Act of 1986, Code of Civil Procedure Section 2016, et seq.

7 13.2 Except as otherwise provided in this Consent Judgment, each Party shall bear its own
8 attorneys' fees and costs.

9 13.3 Nothing in this Section shall preclude a Party from seeking an award of sanctions
10 pursuant to law.



11 **14. RETENTION OF JURISDICTION**

12 14.1 This Court shall retain jurisdiction of this matter to implement or modify the Consent
13 Judgment.

14 **15. AUTHORIZATION**

15 15.1 The undersigned are authorized to execute this Consent Judgment on behalf of their
16 respective Parties and have read, understood and agree to all of the terms and conditions of this
17 document and certifies that he or she is fully authorized by the Party he or she represents to execute
18 the Consent Judgment on behalf of the Party represented and legally bind that Party. Except as
19 explicitly provided herein each Party is to bear its own fees and costs.

20 **APPROVED AS TO FORM:**

22 AGREED TO: 23 Date : <u>8/15</u> , 2023 24 25 By:  26 On Behalf of KASAB 27 Stephanie Sy 28 Law Offices of Stephanie Sy	22 AGREED TO: 23 Date: <u>August 11</u> , 2023 24 25 By:  26 On Behalf of AMG Medical, Inc. 27 Paul S. Rosenlund 28 Duane Morris LLP
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1 **IT IS HEREBY SO STIPULATED:**

2 **AGREED TO:**

AGREED TO:

3
4 Date: August 15, 2023

Date: August 11, 2023

5 By: 
6 Keep America Safe And Beautiful

By: *Janick Coulombe*
AMG Medical, Inc.

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