

SETTLEMENT AGREEMENT

1. INTRODUCTION

1.1 Consumer Protection Group, LLC and International Medsurge Connection, Inc.

This Settlement Agreement is entered into by and between Consumer Protection Group, LLC (“CPG”), on the one hand, and International Medsurge Connection, Inc. (“IMC”), on the other hand, with CPG and IMC collectively referred to as “Parties”.

1.2 General Allegations

CPG alleges that IMC manufactured, distributed, and/or offered an Inflatable Cushion for sale in the State of California allegedly containing Di (2-ethylhexyl) phthalate (“DEHP”), which did not include warnings pursuant to the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health & Safety Code sections 25249.6 *et seq.* (“Proposition 65”). On January 1, 1988, the Governor of California added DEHP to the list of chemicals known to the State to cause cancer. Further, on October 24, 2003, the Governor of California added DEHP to the list of chemicals known to the State to cause developmental toxicity and male reproductive toxicity.

1.3 Product Description

The products covered by this Settlement Agreement are defined as inflatable cushions that contain DEHP, including but not limited to Vinyl Inflatable Cushion, UPC No. 311917186023 (the “Covered Products”) that IMC manufactured, imported, distributed, and/or sold in California.

1.4 **Notices of Violation**

On January 10, 2024, CPG served Walgreen Co. (“Walgreens”) and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, with documents entitled “60-Day Notice of Violation” that provided Walgreens, and such public enforcers with notice that Walgreens was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn California consumers and customers that the Covered Products can expose users in California to DEHP.

On May 1, 2024, CPG served IMC, Walgreens, and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, with supplemental documents entitled “60-Day Notice of Violation” that provided IMC, and such public enforcers with notice that IMC was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn California consumers and customers that the Covered Products can expose users in California to DEHP. IMC supplied the noticed Covered Product to Walgreens.

On July 9, 2024, CPG served IMC, Walgreens, and the requisite public enforcement agencies eligible to initiate Proposition 65 actions on behalf of the People of the State of California, with further documents entitled “60-Day Notice of Violation” that provided IMC, and such public enforcers with notice that IMC was allegedly in violation of California Health & Safety Code section 25249.6 for failing to warn California consumers and customers that the Covered Products can expose users in California to DEHP.

To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the January 10, 2024, May 1, 2024, and July 9, 2024, Notices (collectively the "Notices").

1.5 No Admission

IMC enters into this Settlement Agreement as a full and final settlement of all claims that were raised in the Notices as to the Covered Products, and solely to avoid potentially prolonged and costly litigation. IMC denies the material factual and legal allegations contained in the Notices, maintains that it is not subject to personal jurisdiction in California, and that the Covered Products sold/distributed, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Settlement Agreement shall be construed as an admission against interest by IMC of any fact, finding, issue of law, or violation of law; including, but not limited to any fact or conclusion of law suggesting or demonstrating that IMC has sold any products the Covered Products in California, or that it has violated Proposition 65, or that it is subject to personal jurisdiction in California, nor shall compliance with this Settlement Agreement constitute or be construed as an admission against interest by IMC of any of the above, such being specifically denied by IMC. Nothing in this Settlement Agreement shall prejudice, waive or impair any right, remedy, argument or defense IMC may have in this or any other future legal proceedings, including IMC's position that it is not a person in the course of doing business under Proposition 65, nor that it is not subject to personal jurisdiction in California. This Settlement Agreement is the product of negotiation and compromise and is accepted by IMC solely for purposes of settling, compromising, and resolving issues

disputed in the Notices. However, this Section 1.5 shall not diminish or otherwise affect the Parties' obligations, responsibilities and duties under this Settlement Agreement.

1.6 Effective Date

For purposes of this Settlement Agreement, the term "Effective Date" shall mean the date this agreement has been fully executed by the Parties.

2. INJUNCTIVE RELIEF: WARNING

2.1 Commitment to Reformulate or Warn

As of 30 days after the Effective Date, IMC shall not sell or offer the Covered Products for sale in the State of California unless they are "Reformulated Products" as defined in Section 2.2 or IMC provides warnings as outlined in Section 2.3.

2.2 Reformulation Standards


Reformulated Covered Products" means Covered Products that contain concentrations less than or equal to 0.1% (1,000 parts per million ("ppm")) each of DEHP, dibutyl phthalate ("DBP"), diisononyl phthalate ("DINP"), diisodecyl phthalate ("DIDP"), di-n-hexyl phthalate ("DnHP"), and butyl benzyl phthalate ("BBP"), in any accessible components when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C or other methodologies utilized by federal or state government agencies for the purpose of determining the phthalate content in a solid substance. Reformulated Covered Products do not require a Proposition 65 warning hereunder.

2.3 **General Warning Requirements**


The warning requirements set forth in this Section 2 shall apply only to Covered Products that IMC distributes, markets, sells, or ships for sale in the State of California more than 30 days after the Effective Date that have not been reformulated as set forth in Section 2.2. There shall be no obligation for IMC to provide a warning for any Covered Products that are not Reformulated Products that are manufactured or otherwise enter the stream of commerce prior to 30 days after the Effective Date.

2.4 **Warning Language Requirements**

Any warnings provided pursuant to this Section 2 shall be provided with such conspicuousness, as compared with other words, statements, or designs as to render it reasonably likely to be read and understood by an ordinary individual under customary conditions of purchase or use.. Where required, IMC must provide any one of the following Proposition 65 warnings:

 **[CALIFORNIA PROP. 65] WARNING:** This product can expose you to chemicals including Di (2-ethylhexyl) phthalate (DEHP), which is [are] 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

 **CALIFORNIA WARNING:** Can expose you to chemicals including Di (2-ethylhexyl) phthalate (DEHP) a carcinogen and reproductive toxicant www.P65Warnings.ca.gov

This shall constitute compliance with Proposition 65 with respect to DEHP in the Covered Products. The provisions of Section 2 shall not apply to any of the Covered Products that are already in the stream of commerce or existing inventory. Where a warning label is used for a Covered Product whose labeling includes consumer information as defined by California Code of Regulations title 27 §25600.1(c) in a language other than English, the warning must also be provided in that language in addition to English. Should IMC sell or distribute any Covered Products that are not reformulated through the internet to California the warning will be provided in the manner set forth in 27 CCR sections 25601 and 25602, or as either section may be subsequently amended.

2.5 **Compliance with Warning Regulations.** IMC shall be deemed to be in compliance with this Settlement Agreement by adhering to § 2 of this Settlement Agreement or by complying with any warning requirements adopted by the State of California's Office of Environmental Health Hazard Assessment ("OEHHA") applicable to the Covered Products and the exposures at issue after the Effective Date.

3. **PENALTIES PURSUANT TO HEALTH & SAFETY CODE SECTION 25249.7(b)**

In settlement of all the claims for monetary relief of any kind referred to in this Settlement Agreement and the Notices (except for CPG's attorney's fees set forth in Section 4 below), IMC shall pay a total of two thousand dollars (\$2,000) in civil penalties in accordance with this Section. The penalty payment will be allocated in accordance with California Health & Safety Code section 25249.12(c)(1) & (d), with 75% of the funds remitted to the California Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the penalty remitted to CPG. CPG's counsel shall

be responsible for delivering OEHHA's portion and CPG's portion of any penalty payment made under this Settlement Agreement.

4. REIMBURSEMENT OF FEES AND COSTS

The Parties reached an accord on the compensation due to CPG and its counsel under the Private Attorney General doctrine and principles of contract law. Under these legal principles, IMC shall reimburse CPG's counsel for fees and costs incurred as a result of investigating and bringing this matter to IMC's attention and negotiating this settlement agreement. IMC shall pay Consumer Protection's counsel a total of thirty-three thousand dollars (\$33,000) in complete resolution of any claim for attorneys' fees, expert and investigation fees, and all costs and expenses of any kind incurred in this matter, including, but not limited to all attorney's fees and costs incurred for investigating, testing, consulting with experts, bringing this matter to the attention of IMC, and negotiating this settlement agreement.

5. PAYMENT INFORMATION

By January 17, 2025, IMC shall make a total payment of thirty-five thousand dollars (\$35,000) for the civil penalties and attorney's fees/expenses set forth above to Plaintiff's counsel, Blackstone Law APC by wire transfer. Plaintiff's counsel will provide IMC with wire instructions and tax forms concurrent with the full execution of this settlement agreement. The Parties acknowledge that IMC cannot issue any settlement payments until after IMC receives the requisite wire instructions and W-9 forms from CPG's counsel. Other than this payment, each side is to bear its own attorneys' fees and costs.

6. RELEASE OF ALL CLAIMS

6.1 CPG's Release of IMC, Downstream Customers and Upstream Vendors

In further consideration of the promises and agreements herein contained, and for the payments to be made pursuant to Sections 3, 4 and 5 above, CPG, in its individual capacity, and on behalf of itself, its past and current agents, representatives, attorneys, successors and/or assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of legal action and releases all claims relating to the Covered Products, 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 limited to, investigation fees, expert fees and attorneys' fees) of any nature whatsoever, whether known or unknown, fixed or contingent (collectively "Claims"), against: (a) IMC including its parents, shareholders, members, directors, officers, managers, employees, representatives, agents, attorneys, divisions, subdivisions, subsidiaries, partners, sister companies, and affiliates, and their predecessors, successors and assigns; and (b) each of IMC's suppliers, vendors, downstream distributors, retailers (including but not limited to Walgreens and its affiliates), wholesalers, licensors, licensees, auctioneers, franchisees, dealers, shareholders, cooperative members, customers, owners, purchasers, users (collectively the "Releasees").

CPG also, in its individual capacity, on behalf of itself, its past and current agents, attorneys, successors, and/or assignees and *not* in its representative capacity, provides a general release herein which shall be effective as a full and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs, expenses, attorneys' fees,

damages, losses, claims, liabilities and demands of any nature, character or kind, known or unknown, suspected or unsuspected, against IMC and the Releasees with regards to the Covered Products. CPG acknowledges that it is familiar with California Civil Code section 1542, which provides 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 RELEASING PARTY.

CPG in its individual capacity only, and on behalf of itself, its past and current agents, representatives, attorneys, successors, and/or assignees expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of California Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters. The release in this section shall have no force or effect until payments for the full amount set forth in above Sections 3, 4 and 5 are paid in full to Blackstone Law, APC by IMC.

6.2 IMC's Release of Consumer Protection Group, LLC.

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

signatory to this Settlement Agreement has full authority to enter into and legally bind IMC to this Settlement Agreement.

6.3 Deemed Compliance with Proposition 65

The Parties agree that compliance by IMC with this Settlement Agreement constitutes compliance with Proposition 65 with respect to actual or alleged exposure to DEHP from use of the Covered Products.

7. PUBLIC BENEFIT

It is the Parties' understanding that the commitments it has agreed to herein, and actions to be taken by IMC under this Settlement Agreement confer a significant benefit to the general public, as set forth in Code of Civil Procedure § 1021.5 and Cal. Admin. Code tit. 11, § 3201. As such, it is the intent of the Parties that to the extent any other private party serves a notice and/or initiates an action alleging a violation of Proposition 65 with respect to IMC's alleged failure to provide a warning concerning actual or alleged exposure to DEHP prior to use of the Covered Products it has sold, offered for sale and/or distributed in California or will sell, offer to sell and/or distribute in California, such private party action would not confer a significant benefit on the general public as to those Covered Products addressed in this Settlement Agreement, provided that IMC is in material compliance with this Settlement Agreement.

8. GOVERNING LAW

The terms of this Settlement Agreement shall be governed by the laws of the State of California and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise rendered inapplicable by reason of law generally, or as to the Covered Products, then IMC shall have no further obligations pursuant to this Settlement

Agreement, but shall have no recourse to claw back payments already made in accordance with Section 3, 4 and 5 of this Settlement Agreement.

9. ENFORCEMENT

Before any Party may take action to enforce the terms of this Settlement Agreement for alleged breach, that Party must give the other Party written notice and a good faith opportunity to respond and cure the alleged violation. The Parties must thereafter meet and confer for a period of no less than 30 days to try to resolve any alleged violation. CPG shall not bring an enforcement action or institute a judicial proceeding or seek any other relief of any kind if IMC demonstrates that it has complied with the requirements of Sections 2 and 5 of this Settlement Agreement. In the event that meet-and-confer efforts are unsuccessful, the Party alleging a violation may initiate a judicial proceeding to enforce this Settlement Agreement no earlier than 30 days after issuing the written notice specified herein. In the event that a Party initiates such a judicial proceeding, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and costs in accordance with applicable law.

10. NOTICES

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

For IMC:

Dr. Omi Bhati
International Medsurg Connection, Inc.
935 N. Plum Grove, Suite F
Schaumburg, IL 60173-4770

With Copy To:
James Robert Maxwell, Esq.
Rogers Joseph O'Donnell
311 California Street, 10th Floor
San Francisco, CA 94104
JMaxwell@rjo.com

For CPG: Jonathan M. Genish, Esq.
8383 Wilshire Blvd., Suite 745
Beverly Hills, CA 90211
jgenish@blackstonepc.com

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

11. JOINT PREPARATION

The Parties have jointly participated in the preparation of this Settlement Agreement and this Settlement Agreement is the result of the joint efforts of the Parties. Accordingly, any uncertainty or ambiguity existing in this Settlement Agreement shall not be interpreted against any Party as a result of the manner of the preparation of this Settlement Agreement. Each Party to this Settlement Agreement agrees that any statute or rule of construction providing that ambiguities are to be resolved against the drafting Party should not be employed in the interpretation of this Settlement Agreement and, in this regard, the Parties hereby waive California Civil Code § 1654.

12. COUNTERPARTS; FACSIMILE/E-SIGNATURES

This Settlement Agreement may be executed in counterparts and by facsimile or e-signatures, each of which shall be deemed an original, and all of which, when taken together, shall constitute one and the same document.

13. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)

CPG agrees to comply with the reporting requirements referenced in California Health & Safety Code § 25249.7(f).

14. ENTIRE AGREEMENT

This Settlement Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and all related prior discussions, negotiations, commitments and understandings. No other agreements, oral or otherwise, exist to bind either of the Parties.

15. MODIFICATION

This Settlement Agreement may be modified only by a written agreement signed by the Parties.

16. AUTHORIZATION

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

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<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>January 16, 2025</u></p> <p>By: </p> <p>On Behalf of Consumer Protection Group, LLC</p>	<p style="text-align: center;">AGREED TO:</p> <p>Date: <u>01/15/2025</u></p> <p>By: </p> <p>On Behalf of International MedSurg Connection, Inc.</p> 
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