



2. On October 1, 2020, AMAG and Covis announced that they had entered into an Agreement and Plan of Merger (the “Merger Agreement”) pursuant to which Covis will acquire all outstanding shares of AMAG for \$13.75 in cash per share of AMAG common stock (the “Offer Price”) (the “Proposed Transaction”).

3. On October 15, 2020, in order to convince AMAG’s common stockholders to tender their shares in the Offer, AMAG filed a Schedule 14D-9 Solicitation/Recommendation Statement (the “14D-9”) with the SEC, which omits or misrepresents material information concerning, among other things, Company management’s financial projections and the valuation analyses performed by the Company’s financial advisor, Goldman Sachs & Co. LLC (“Goldman Sachs”). The failure to adequately disclose such material information renders the 14D-9 false and misleading.

4. For these reasons, and as set forth in detail herein, Plaintiff alleges that defendants violated Sections 14(d)(4), 14(e) and 20(a) of the Exchange Act as AMAG’s stockholders need such information in order to make a sufficiently informed decision whether to tender their shares in support of the Proposed Transaction or seek appraisal.

### **JURISDICTION AND VENUE**

5. This Court has jurisdiction over the claims asserted herein for violations of Sections 14(d)(4), 14(e) and 20(a) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder pursuant to Section 27 of the Exchange Act, 15 U.S.C. § 78aa, and 28 U.S.C. § 1331 (federal question jurisdiction).

6. This Court has jurisdiction over the defendants because each defendant is either a corporation that conducts business in and maintains operations within this District, or is an

individual with sufficient minimum contacts with this District so as to make the exercise of jurisdiction by this Court permissible under traditional notions of fair play and substantial justice.

7. Venue is proper in this District pursuant to 28 U.S.C. § 1391 because, among other things: (a) the conduct at issue will have an effect in this District; (b) a substantial portion of the transactions and wrongs complained of herein, occurred in this District; and (c) certain defendants have received substantial compensation in this District by doing business here and engaging in numerous activities that had an effect in this District.

### **PARTIES**

8. Plaintiff is, and has been at all times relevant hereto, a continuous stockholder of AMAG.

9. Defendant AMAG is a Delaware corporation with its principal executive offices located at 1100 Winter Street, Waltham, Massachusetts 02451. AMAG's common stock is traded on the Nasdaq Global Select Market under the ticker symbol "AMAG."

10. Defendant Scott D. Myers ("Myers") has served as the Company's President, Chief Executive Officer ("CEO"), and a director since April 2020.

11. Defendant John A. Fallon ("Fallon") has served as a director of the Company since September 2014.

12. Defendant Paul Fonteyne ("Fonteyne") has served as a director of the Company since October 2019.

13. Defendant David Johnson ("Johnson") has served as a director of the Company since 2020.

14. Defendant Kathrine O'Brien ("O'Brien") has served as a director of the Company since April 2019.

15. Defendant Anne M. Phillips (“Phillips”) has served as a director of the Company since April 2019.

16. Defendant Gino Santini (“Santini”) has served as Chairman of the Board since April 2014 and a director of the Company since February 2012.

17. Defendant Davey S. Scoon (“Scoon”) has served as a director of the Company since December 2006.

18. Defendant James R. Sulat (“Sulat”) has served as a director of the Company since April 2014.

19. Defendants identified in paragraphs 10 to 18 are collectively referred to herein as the “Board” or the “Individual Defendants.”

20. Relevant non-party Covis is headquartered in Luxembourg with operations in Zug, Switzerland.

21. Relevant non-party Merger Sub is a Delaware corporation and direct, wholly owned subsidiary of Covis.

## **SUBSTANTIVE ALLEGATIONS**

### **Background of the Company and the Proposed Transaction**

22. AMAG is a pharmaceutical company focused on bringing innovative products to patients with unmet medical needs by leveraging the Company’s development and commercial expertise to invest in and grow pharmaceutical products and product candidates across a range of therapeutic areas.

23. AMAG’s currently marketed products support the health of patients in the areas of hematology and maternal and women’s health, including Feraheme (ferumoxytol injection), an intravenous iron replacement therapeutic agent, Makena (hydroxyprogesterone caproate injection) auto-injector, a progestin indicated to reduce the risk of preterm birth, Intrarosa (prasterone)

vaginal inserts, and Vyleesi (bremelanotide injection), an as-needed auto-injector device.

24. The Company's portfolio also includes two product candidates, AMAG-423 (digoxin immune fab (ovine)), an antibody fragment in development for the treatment of severe preeclampsia in pregnant women, and ciraparantag, a small molecule anticoagulant in development as a reversal agent.

25. On August 6, 2020, AMAG announced its second quarter 2020 financial results, including operating loss of \$7.0 million in the second quarter of 2020, compared to an operating loss of \$116.2 million in the same period in 2019 and loss in adjusted EBITDA of \$1.7 million in the second quarter of 2020, compared to a loss in adjusted EBITDA of \$24.7 million for the same period of 2019. Defendant Myers commented on the Company's second quarter results, stating:

Amidst the unprecedented uncertainty that COVID-19 placed on the healthcare system and our economy, AMAG's marketed therapeutics performed well in the second quarter due in part to our teams' ability to adapt in a rapidly-changing environment. Over the past three months, we have advanced the company's strategic evolution by reaching important milestones that include a strategic, ex-US partnership with Norgine to further progress ciraparantag and strengthen our company's ability to invest in our pipeline. We have also streamlined expenses by completing the divestment of Intrarosa® and Vyleesi® and making changes to our portfolio designed to further focus on programs with the highest potential to deliver innovative treatments for patients and unlock shareholder value.

26. On October 1, 2020, AMAG and Covis issued a joint press release announcing the Proposed Transaction, which states, in relevant part:

LUXEMBOURG, ZUG, Switzerland and WALTHAM, Mass., Oct. 01, 2020 -- Covis Group S.à r.l. ("Covis") and AMAG Pharmaceuticals, Inc. (NASDAQ: AMAG) today announced that they have entered into a definitive agreement under which Covis will acquire AMAG for \$13.75 per share in cash, or approximately \$498 million on a fully diluted basis and approximately \$647 million on an enterprise basis, including debt obligations expected to be assumed or repaid net of cash. The offer represents a premium of approximately 46% to the closing price of AMAG's common stock on September 30, the last full trading day prior to the announcement.

AMAG CEO Scott Myers added, “In the beginning of 2020, AMAG announced that the company had undertaken a strategic review of our product portfolio and strategy, the guiding principles of which included driving near- and long-term profitability and enhancing shareholder value. This strategic review resulted in the company pursuing and accomplishing the divestiture of its women’s health assets, and other efforts to streamline and strengthen the core business to position AMAG for the future. Following this initial transformation, our Board of Directors and management team, together with independent legal and financial advisors, thoroughly evaluated the transaction with Covis as well as other strategic options and concluded that it represents the most compelling opportunity for shareholders, providing them certain and immediate cash value. We believe Covis is the right partner for AMAG, especially in light of Covis’ shared commitment to ensuring that our therapies will reach patients in need. We are confident the work we’ve done will continue to thrive under Covis’ leadership.”

The completion of the tender offer is subject to customary closing conditions, including the tender of at least a majority of the outstanding shares of AMAG’s common stock, the expiration or termination of the waiting period under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, and other customary conditions. Following the successful completion of the tender offer, an indirect, wholly owned subsidiary of Covis will merge with AMAG (the “merger”) and the outstanding AMAG shares not tendered in the tender offer will be converted into the right to receive the same \$13.75 per share in cash paid in the tender offer. The tender offer is expected to commence in October 2020. Covis plans to finance the transaction with cash on hand, and a combination of committed debt and equity financing. There is no financing condition to the obligations of Covis to consummate the transaction.

As part of the transaction, Covis intends to enter into an amended and restated credit facility with its current lenders (the “Lenders”), pursuant to which the Lenders will provide up to a \$460 million senior secured incremental term loan and a \$55 million secured revolver (the “Covis Debt Financing”). The proceeds from the Covis Debt Financing, plus equity commitments from Covis’ equity sponsor, will be used to pay the cash purchase price for the transaction and repay any of the existing AMAG debt that is not assumed. The Covis Debt Financing amount will be added to Covis’ current \$450 million term loan facility with the Lenders. As the merger will result in a change of control under the terms of AMAG’s Indenture governing its 3.25% Convertible Senior Unsecured Notes Due 2022 (the “Convertible Notes”), the holders of the Convertible Notes will have the right to put at par the Convertible Notes held by them for a period of twenty business days following the closing of the merger.

All Board members and executive officers of AMAG have agreed to tender their shares in favor of the transaction. The transaction, which has been unanimously approved by the Board of Directors of each company, is expected to close in

November 2020, pending Hart-Scott-Rodino (HSR) approval and the conditions to the tender offer being satisfied.

**The 14D-9 Contains Material Misstatements or Omissions**

28. On October 15, 2020, the defendants filed the materially incomplete and misleading 14D-9 with the SEC. Designed to convince the Company's stockholders to tender their shares in the Offer, the 14D-9 is rendered misleading by the omission of critical information concerning the Company's financial projections and the valuation analyses performed by the Company's financial advisor, Goldman Sachs in connection with the Proposed Transaction.

***Material Omissions Concerning AMAG's Financial Projections and Goldman Sachs' Financial Analyses***

29. The 14D-9 omits material information regarding the Company's financial projections provided by AMAG management and relied upon by Goldman Sachs for its financial analyses.

30. For example, the 14D-9 fails to disclose: (i) the specific risk adjustments AMAG management made to derive the risk-adjusted estimates of the unlevered free cash flows to be generated from each of Feraheme, Makena, and Ciraparantag for the period from June 30, 2020 through 2040; (ii) the Company's net operating loss carryforwards ("NOLs") forecast; (iii) Company management's estimates of research and development costs; (iv) Company management's estimates of corporate costs; and (v) the line items underlying the Company's EBIT.

31. The 14D-9 also describes Goldman Sachs' fairness opinion and the various valuation analyses performed in support of its opinion. However, the description of Goldman Sachs' fairness opinion and analyses fails to include key inputs and assumptions underlying these analyses. Without this information, as described below, AMAG's public stockholders are unable

to fully understand these analyses and, thus, are unable to determine what weight, if any, to place on Goldman Sachs' fairness opinion in determining whether to tender their shares in the Offer or seek appraisal.

32. With respect to Goldman Sachs' *Illustrative Sum-of-the-Parts Discounted Cash Flow Analysis*, the 14D-9 fails to disclose: (i) AMAG management's risk-adjusted estimates of the unlevered free cash flows to be generated from each of Feraheme, Makena, and Ciraparantag for the period from June 30, 2020 through 2040; (ii) AMAG management's estimates of revenues expected in connection with certain Intrarosa Milestones payments; (iii) AMAG management's estimates of research and development costs; (iv) AMAG management's estimates of corporate costs; (v) the NOL forecasts; (vi) the individual inputs and assumptions underlying the range of discount rates of 10.5% to 12.5%; (vii) the number of fully diluted outstanding shares of the Company; and (viii) the Company's net debt.

33. With respect to Goldman Sachs' *Illustrative Present Value of Future Share Price Analysis*, the 14D-9 fails to disclose: (i) Goldman Sachs' basis for applying a range of illustrative one-year forward EV/Revenue multiples of 2.0x to 3.0x; (ii) the forecasted net debt used in the analysis; (iii) the number of fully diluted outstanding shares of the Company; and (iv) the individual inputs and assumptions underlying the discount rate of 11.6%.

34. With respect to Goldman Sachs' *Premia Analysis*, the 14D-9 fails to disclose: (i) the transactions observed in the analysis; and (ii) the premiums paid in the transactions.

35. The omission of this material information renders the statements in the "Certain Prospective Financial Information" and "Opinion of the Company's Financial Advisor" sections of the 14D-9 false and/or materially misleading in contravention of the Exchange Act.

36. Accordingly, Plaintiff seeks injunctive and other equitable relief to prevent the irreparable injury that Company stockholders will continue to suffer absent judicial intervention.

**CLAIMS FOR RELIEF**

**COUNT I**

**Claims Against All Defendants for Violations  
of Section 14(d) of the Exchange Act and SEC Rule 14d-9**

27. Plaintiff repeats all previous allegations as if set forth in full.

28. Defendants have caused the 14D-9 to be issued with the intention of soliciting AMAG stockholders to tender their shares in the Offer.

29. Section 14(d)(4) of the Exchange Act and SEC Rule 14d-9 promulgated thereunder require full and complete disclosure in connection with tender offers.

30. The 14D-9 violates Section 14(d)(4) and Rule 14d-9 because it omits material facts, including those set forth above, which omission renders the 14D-9 false and/or misleading.

31. Defendants knowingly or with deliberate recklessness omitted the material information identified above from the 14D-9, causing certain statements therein to be materially incomplete and therefore misleading. Indeed, while defendants undoubtedly had access to and/or reviewed the omitted material information in connection with approving the Proposed Transaction, they allowed it to be omitted from the 14D-9, rendering certain portions of the 14D-9 materially incomplete and therefore misleading.

32. The misrepresentations and omissions in the 14D-9 are material to Plaintiff and the other stockholders of AMAG, who will be deprived of their right to make an informed decision whether to tender their shares or seek appraisal if such misrepresentations and omissions are not corrected prior to the expiration of the Offer. Plaintiff has no adequate remedy at law. Only

through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that defendants' actions threaten to inflict.

## **COUNT II**

### **Claims Against All Defendants for Violations of Section 14(e) of the Exchange Act**

33. Plaintiff repeats all previous allegations as if set forth in full.

34. Defendants violated Section 14(e) of the Exchange Act by issuing the 14D-9 in which they made untrue statements of material facts or failed to state all material facts necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading, or engaged in deceptive or manipulative acts or practices, in connection with the Offer.

35. Defendants knew that Plaintiff would rely upon their statements in the 14D-9 in determining whether to tender his shares pursuant to the Offer or seek appraisal.

36. As a direct and proximate result of these defendants' unlawful course of conduct in violation of Section 14(e) of the Exchange Act, absent injunctive relief from the Court, Plaintiff has sustained and will continue to sustain irreparable injury by being denied the opportunity to make an informed decision in deciding whether or not to tender his shares or seek appraisal.

## **COUNT III**

### **Claims Against the Individual Defendants for Violation of Section 20(a) of the Exchange Act**

37. Plaintiff repeats all previous allegations as if set forth in full.

38. The Individual Defendants acted as controlling persons of AMAG within the meaning of Section 20(a) of the Exchange Act as alleged herein. By virtue of their positions as officers or directors of AMAG and participation in or awareness of the Company's operations or intimate knowledge of the false statements contained in the 14D-9 filed with the SEC, they had

the power to influence and control and did influence and control, directly or indirectly, the decision-making of the Company, including the content and dissemination of the various statements which Plaintiff contends are false and misleading.

39. Each of the Individual Defendants was provided with or had unlimited access to copies of the 14D-9 and other statements alleged by Plaintiff to be misleading prior to or shortly after these statements were issued and had the ability to prevent the issuance of the statements or cause the statements to be corrected.

40. In particular, each of the Individual Defendants had direct and supervisory involvement in the day-to-day operations of the Company, and, therefore, is presumed to have had the power to control or influence the particular transactions giving rise to the securities violations as alleged herein, and exercised the same. The 14D-9 at issue contains the unanimous recommendation of each of the Individual Defendants to approve the Proposed Transaction. They were, thus, directly involved in the making of this document.

41. In addition, as the 14D-9 sets forth at length, and as described herein, the Individual Defendants were each involved in negotiating, reviewing, and approving the Proposed Transaction. The 14D-9 purports to describe the various issues and information that they reviewed and considered — descriptions which had input from the Individual Defendants.

42. By virtue of the foregoing, the Individual Defendants have violated section 20(a) of the Exchange Act.

43. Plaintiff has no adequate remedy at law. Only through the exercise of this Court's equitable powers can Plaintiff be fully protected from the immediate and irreparable injury that defendants' actions threaten to inflict.

**PRAYER FOR RELIEF**

WHEREFORE, Plaintiff demands judgment and preliminary and permanent relief, including injunctive relief, in his favor on behalf of AMAG, and against defendants, as follows:

A. Preliminarily and permanently enjoining defendants and all persons acting in concert with them from proceeding with, consummating, or closing the Proposed Transaction;

B. In the event defendants consummate the Proposed Transaction, rescinding it and setting it aside or awarding rescissory damages to Plaintiff;

C. Directing the Individual Defendants to disseminate a 14D-9 that does not contain any untrue statements of material fact and that states all material facts required in it or necessary to make the statements contained therein not misleading;

D. Awarding Plaintiff the costs of this action, including reasonable allowance for Plaintiff's attorneys' and experts' fees; and

E. Granting such other and further relief as this Court may deem just and proper.

**JURY DEMAND**

Plaintiff demands a trial by jury on all claims and issues so triable.

Dated: November 4, 2020



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CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Michael Buss

(b) County of Residence of First Listed Plaintiff Los Angeles, CA (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Richard A. Acocelli, WeissLaw LLP, 1500 Broadway, 16th Fl., New York, NY 10036, (212) 682-3025

DEFENDANTS

AMAG Pharmaceuticals, Inc. (Please see the attached addendum I)

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF, DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

Table with columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Personal Injury, Property Damage, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from Another District, 6 Multidistrict Litigation - Transfer, 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 15 U.S.C. §§ 78n(d)(4), 78n(e), 78(a) Rule 14d-9, 17 C.F.R. §240.14d-9(d) Brief description of cause: The Complaint alleges violations of sections 14(d), 14(e) and 20(a) of the Securities Exchange Act of 1934.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: [X] Yes [ ] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE Hon. Pamela K. Chen DOCKET NUMBER 20-cv-05234

DATE 11/04/2020 SIGNATURE OF ATTORNEY OF RECORD [Signature]

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

**CERTIFICATION OF ARBITRATION ELIGIBILITY**

Local Arbitration Rule 83.7 provides that with certain exceptions, actions seeking money damages only in an amount not in excess of \$150,000, exclusive of interest and costs, are eligible for compulsory arbitration. The amount of damages is presumed to be below the threshold amount unless a certification to the contrary is filed.

Case is Eligible for Arbitration

I, Richard A. Accocelli, counsel for Plaintiff, do hereby certify that the above captioned civil action is ineligible for compulsory arbitration for the following reason(s):

- monetary damages sought are in excess of \$150,000, exclusive of interest and costs,
- the complaint seeks injunctive relief,
- the matter is otherwise ineligible for the following reason

**DISCLOSURE STATEMENT - FEDERAL RULES CIVIL PROCEDURE 7.1**

Identify any parent corporation and any publicly held corporation that owns 10% or more of its stocks:

N/A

**RELATED CASE STATEMENT (Section VIII on the Front of this Form)**

Please list all cases that are arguably related pursuant to Division of Business Rule 50.3.1 in Section VIII on the front of this form. Rule 50.3.1 (a) provides that "A civil case is "related" to another civil case for purposes of this guideline when, because of the similarity of facts and legal issues or because the cases arise from the same transactions or events, a substantial saving of judicial resources is likely to result from assigning both cases to the same judge and magistrate judge." Rule 50.3.1 (b) provides that " A civil case shall not be deemed "related" to another civil case merely because the civil case: (A) involves identical legal issues, or (B) involves the same parties." Rule 50.3.1 (c) further provides that "Presumptively, and subject to the power of a judge to determine otherwise pursuant to paragraph (d), civil cases shall not be deemed to be "related" unless both cases are still pending before the court."

**NY-E DIVISION OF BUSINESS RULE 50.1(d)(2)**

- 1.) Is the civil action being filed in the Eastern District removed from a New York State Court located in Nassau or Suffolk County?  Yes  No
- 2.) If you answered "no" above:
  - a) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in Nassau or Suffolk County?  Yes  No
  - b) Did the events or omissions giving rise to the claim or claims, or a substantial part thereof, occur in the Eastern District?  Yes  No
  - c) If this is a Fair Debt Collection Practice Act case, specify the County in which the offending communication was received:

If your answer to question 2 (b) is "No," does the defendant (or a majority of the defendants, if there is more than one) reside in Nassau or Suffolk County, or, in an interpleader action, does the claimant (or a majority of the claimants, if there is more than one) reside in Nassau or Suffolk County?  Yes  No

(Note: A corporation shall be considered a resident of the County in which it has the most significant contacts).

**BAR ADMISSION**

I am currently admitted in the Eastern District of New York and currently a member in good standing of the bar of this court.

Yes  No

Are you currently the subject of any disciplinary action (s) in this or any other state or federal court?

Yes (If yes, please explain)  No

I certify the accuracy of all information provided above.

Signature: 

**ADDENDUM I: TO CIVIL COVER SHEET**

DEFENDANTS (continued): Scott D. Myers, John A. Fallon, Paul Fonteyne, David Johnson, Kathrine O'Brien, Anne M. Phillips, Gino Santini, Davey S. Scoon, and James R. Sulat