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6 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED  
FILED  
San Francisco County Superior Court

DEC 11 2008

GORDON PARK-LI, Clerk  
BY:           JOCELYN C. ROQUE            
Deputy Clerk

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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
10 COUNTY OF SAN FRANCISCO

11  
12 CENTER FOR ENVIRONMENTAL  
HEALTH, a non-profit corporation,

13 Plaintiff,

14 v.

15 ANSELL HEALTHCARE PRODUCTS,  
16 INC., and Defendant DOES 1 through 200,  
inclusive,

17  
18 Defendants.

Case No. CGC-08-473477

*(JCL)*  
[PROPOSED] CONSENT JUDGMENT  
RE: MAGLA PRODUCTS, LLC

1       **1.     INTRODUCTION**

2               **1.1**     On May 7, 2008, plaintiff the Center for Environmental Health  
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint titled *Center for*  
4 *Environmental Health v. Ansell Healthcare Products, Inc., et al.*, San Francisco County Superior  
5 Court Case Number CGC-08-473477 (the “CEH Action”), for civil penalties and injunctive relief  
6 pursuant to the provisions of Cal. Health & Safety Code §25249.5 et seq. (“Proposition 65”)  
7 naming Magla Products, LLC (“Defendant”) as a defendant.

8               **1.2**     Defendant is a corporation that employs 10 or more persons and  
9 manufactured, distributed and/or sold vinyl gloves (the “Products”) in the State of California.

10              **1.3**     Beginning on or about April 27, 2007, CEH served Defendant and the  
11 appropriate public enforcement agencies with the requisite 60-day notice (the “Notice”) alleging  
12 that Defendant was in violation of Proposition 65. CEH’s Notice and the Complaint in this  
13 Action allege that Defendant exposes people who use or otherwise handle the Products to di(2-  
14 ethylhexyl) phthalate (“DEHP”), a chemical known to the State of California to cause cancer,  
15 birth defects and other reproductive harm, without first providing clear and reasonable warning to  
16 such persons regarding the carcinogenicity and reproductive toxicity of DEHP. The Notice and  
17 Complaint allege that Defendant’s conduct violates Health & Safety Code §25249.6, the warning  
18 provision of Proposition 65. Defendant disputes such allegations and asserts that all of its  
19 products are safe and comply with all applicable laws.

20              **1.4**     For purposes of this Consent Judgment only, the parties stipulate that this  
21 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and  
22 personal jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue is  
23 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent  
24 Judgment as a full and final resolution of all claims that were or could have been raised in the  
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1 Complaint based on the facts alleged therein.

2           **1.5**     The Parties enter into this Consent Judgment pursuant to a settlement of  
3 certain disputed claims between the Parties as alleged in the Complaint. By executing this  
4 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the parties'  
5 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of  
6 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the  
7 Consent Judgment constitute or be construed as an admission by the Parties of any fact,  
8 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
9 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or  
10 any other or future legal proceedings.

11  
12           **2.       COMPLIANCE - REFORMULATION**

13           **2.1     Reformulation Standard -- Removal of DEHP.** Beginning 60 days after  
14 entry of this Consent Judgment (the "Compliance Date"), Defendant shall not manufacture,  
15 distribute, ship, or sell, or cause to be manufactured, distributed or sold, any Product that contains  
16 in excess of trace amounts of DEHP. For purposes of this Consent Judgment only, "in excess of  
17 trace amounts" is more than 200 parts per million ("ppm"). In reformulating the Products to  
18 remove DEHP, Defendant may not use butyl benzyl phthalate ("BBP"), di-n-hexyl phthalate  
19 ("DnHP"), di-n-butyl phthalate ("DBP") or di-isodecyl phthalate ("DIDP") in excess of trace  
20 amounts. DEHP, BBP, DnHP, DBP and DIDP are together referred to herein as "Listed  
21 Phthalates."  
22

23  
24           **2.1.1   Certification from suppliers.** Defendant shall issue specifications  
25 to its suppliers requiring that the Products shall not contain DEHP or any other Listed Phthalate in  
26 excess of trace amounts. Defendant shall obtain written certification from its suppliers of the  
27 Products certifying that the Products do not contain DEHP.  
28

1                                   **2.1.2 Testing.** In order to ensure compliance with the requirements of  
2 Section 2.1, Defendant shall require its suppliers to provide Defendant with certification of testing  
3 confirming that the Products do not contain Listed Phthalates in excess of trace amounts. Testing  
4 shall be conducted in compliance with Section 2.1.2.1. All testing pursuant to this Section shall be  
5 performed by an independent laboratory in accordance with EPA SW8270C and EPA SW3580A,  
6 or ASTM D3421-75, or equivalent (referred to as the "Test Protocols"). Defendant shall provide  
7 reports of such tests to CEH on a confidential basis.  
8

9                                   **2.1.2.1 Testing Frequency – Current Supplier.** For the  
10 first, second, tenth, twentieth, thirtieth, fiftieth and seventieth orders of Products purchased from  
11 Defendant's current supplier after the Compliance Date, Defendant shall require such supplier to  
12 randomly select and test three gloves from each order. As used in this Consent Judgment, the  
13 "Current Supplier" is a supplier who provided Products to Defendant before August 15, 2008.  
14

15                                   **2.1.2.2 Testing of Products from Additional Suppliers.** If  
16 Defendant purchases products from one or more Additional Suppliers, then in addition to the  
17 certification required of such suppliers pursuant to section 2.1.2, Defendant shall require such  
18 additional suppliers to randomly select and test three gloves from the first and fifth orders. As  
19 used in this Consent Judgment, "Additional Suppliers" are those who provided products to  
20 Defendant on or after, but not before, August 15, 2008. This requirement will remain in effect for  
21 any Additional Suppliers from whom Defendant purchases products from August 15, 2008  
22 through August 15, 2012. Defendant shall have no further obligation to either test Products or  
23 require testing by its suppliers after August 15, 2012.  
24

25                                   **2.1.2.3 Traceability of Products.** Beginning with the  
26 twenty-fifth container received after the Compliance Date (or earlier, should Defendant so  
27 choose), Defendant shall require its suppliers to incorporate a means of product traceability into  
28

1 its packaging or labeling. As used in this Consent Judgment, “product traceability” means a  
2 printed code on the packaging or other means that allows Defendant to determine the supplier of a  
3 Product from examining the packaging or labeling. Beginning with the first order from any  
4 additional supplier, Defendant shall require its additional suppliers to incorporate a means of  
5 product traceability into its packaging or labeling. Defendant shall notify CEH of the element of  
6 such coding that indicates the products were shipped after the Compliance Date.  
7

8 **2.1.2.4 Inadequate Certification or Failed Tests.**

9 Defendant shall reject any shipments that are not accompanied by certifications and testing in  
10 compliance with Section 2.1.2, and shall notify CEH of any tests that fail to establish the absence  
11 of Listed Phthalates in excess of trace amounts. Defendant shall continue to require its current  
12 supplier to provide test reports until that supplier has provided the seven test reports as required  
13 by section 2.1.2.1. If Magla rejects any shipments because a required test report fails to establish  
14 the absence of Listed Phthalates in excess of trace amounts, it shall then require that such supplier  
15 begin the testing process anew.  
16

17 **2.1.3 Confirmatory Testing by CEH.** CEH intends to conduct  
18 confirmatory testing of the Products at its own expense. For any testing conducted by  
19 Defendant’s suppliers pursuant to this Consent Judgment, Defendant shall provide CEH with the  
20 same number of gloves tested by the supplier, from the same lot tested, which CEH may then use  
21 for its own testing. In addition, CEH may test Products obtained from other sources. However,  
22 so long as Defendant complies with the requirements of Section 2.1.2.3 of this Consent Judgment,  
23 concerning traceability, CEH shall not base a claim of non-compliance on any tests of Products  
24 except for Products provided to it by the Defendant or products CEH acquires from other sources  
25 and which bear package coding indicating they were manufactured after the Compliance Date.  
26 Any testing by CEH shall be conducted at an independent laboratory, in accordance with the Test  
27  
28

1 Protocols. In the event that such testing demonstrates that the Products contain Listed Phthalates  
2 in excess of trace amounts, CEH shall provide Defendant with the test results, including  
3 information sufficient to permit Defendant to identify the Product(s). CEH shall also provide  
4 Defendant with packaging from such allegedly non-compliant product(s) and a sample of  
5 remaining, untested product from the same package as the allegedly non-compliant product(s).  
6 Defendant shall, within 30 days following receipt of such notice and the remaining product(s) and  
7 packaging, provide CEH with an explanation regarding the presence of Listed Phthalates in the  
8 Products or such other evidence as Defendant believes establishes that the allegedly non-  
9 compliant product(s) were in compliance with this Consent Judgment.. Unless Defendant  
10 provides CEH with information sufficient to demonstrate that CEH's test result was incorrect,  
11 Defendant shall be liable for stipulated payments in lieu of penalties for Products for which CEH  
12 produces tests demonstrating the presence of Listed Phthalates in the Products. The payments  
13 shall be made to CEH and used for the purposes described in Section 3.1.

16 **2.1.3.1 Stipulated Payments In Lieu of Penalties.** If

17 stipulated payments in lieu of penalties are warranted under section 2.1.3, the stipulated payment  
18 amount shall be as follows for each Occurrence of Defendant selling a Product containing Listed  
19 Phthalates after the Compliance Date:

20 First Occurrence: \$500

21 Second Occurrence: \$750

22 Third Occurrence: \$1,000

23 Thereafter: \$2,500

24 CEH shall have the burden of proving noncompliance by a preponderance of the evidence.

25 As used in this section 2.1.3.1, an "Occurrence" is the sale of any number of Products  
26 from the same lot containing Listed Phthalates.  
27  
28

1           **3. SETTLEMENT PAYMENTS**

2           **3.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH  
3 \$14,750 in lieu of any penalty pursuant to Health and Safety Code §25249.7(b). CEH shall use  
4 such funds to continue its work protecting people from exposures to toxic chemicals. As part of  
5 this work, CEH intends to conduct periodic testing of the Products as set forth in section 2.1.3.  
6 The payment required under this section shall be made payable to CEH.  
7

8           **3.2 Attorneys' Fees and Costs.** Defendant shall pay \$30,250 to reimburse  
9 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any  
10 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,  
11 litigating and negotiating a settlement in the public interest. The payment required under this  
12 section shall be made payable to Lexington Law Group, LLP.  
13

14           **3.3 Delivery of Payments.** The payments required under this Section 3 shall  
15 be delivered to the Lexington Law Group at the address set forth in section 11.1 in two  
16 installments as follows: the payment required pursuant to Section 3.1 together with \$7,750 of the  
17 payment required under Section 3.2 are due within 10 days of entry of this Consent Judgment; the  
18 remaining \$22,500 of the payment required under Section 3.2 is due on or before January 15,  
19 2009.  
20

21           **4. MODIFICATION OF CONSENT JUDGMENT**

22           **4.1** This Consent Judgment may be modified by written agreement of  
23 CEH and Defendant, or upon motion of CEH or Defendant as provided by law.

24           **4.1.1 Change in law.** It is the intention of this Consent Judgment that  
25 Defendant's present and future obligations concerning distribution of Products containing Listed  
26 Phthalates should not remain in effect if Proposition 65 is determined by a court, legislature or  
27 other appropriate regulatory authority to no longer apply to the Products and/or Listed Phthalates.  
28

1                                   **4.1.1.1** Should any State or Federal Appellate Court rule that State  
2 or Federal legislation has effectively repealed or preempted Proposition 65 in its entirety or with  
3 respect to Products or DEHP, or should legislation or regulatory action occur which removes  
4 DEHP from the lists of chemicals established pursuant to Cal. Health & Safety Code §25249.8,  
5 then Defendant shall have no further obligations under this Consent Judgment.  
6

7                                   **4.1.1.2** Should applicable State or Federal law change so as to  
8 reduce the obligations of companies such as Defendant with respect to Listed Phthalates, or  
9 should such obligations be made less stringent as a result of the amendment, repeal or preemption  
10 of Proposition 65 or the lists of chemicals established pursuant to Cal. Health & Safety Code  
11 §25249.8, then such amendment, repeal or preemption may constitute good cause for  
12 modification of this Consent Judgment.  
13

14                                   **4.1.2 Less Stringent Settlement Provisions Involving Other**  
15 **Companies.** CEH intends to enter into agreements with other entities that manufacture, distribute  
16 and/or sell Products. It is the intention of this Consent Judgment that no such settlement shall  
17 place Defendant at a competitive disadvantage with other such entities. Should the provisions of  
18 a Consent Judgment with a similarly situated manufacturer or distributor of products be less  
19 stringent than those contained in this Consent Judgment, Defendant may obtain a modification of  
20 this Consent Judgment to conform with the terms of the later entered Consent Judgment.  
21

22                                   **4.1.3** Before seeking modification of this Consent Judgment by the  
23 Court, either party shall provide the other with 30 days written notice of its intention to seek  
24 modification, together with the basis for such modification. The parties agree to informally meet  
25 and confer concerning such requests prior to seeking modification by the Court.  
26

27                                   **5. ENFORCEMENT OF CONSENT JUDGMENT**

28                                   **5.1** CEH may, by motion or application for an order to show cause, enforce the



1 terms and conditions contained in this Consent Judgment. Should CEH prevail on any such  
2 motion, it shall be entitled to recover its reasonable attorneys' fees and costs associated with  
3 enforcing the Consent Judgment.

4 **6. APPLICATION OF CONSENT JUDGMENT**

5 **6.1** This Consent Judgment shall apply to and be binding upon the  
6 parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any  
7 of them.

8 **7. CLAIMS COVERED AND RELEASE OF CLAIMS**

9 **7.1** This Consent Judgment is a full, final and binding resolution between  
10 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in the  
11 Complaint against Defendant (including any claims that could be asserted in connection with any  
12 of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates, directors,  
13 officers, employees, agents, attorneys, distributors, or customers (collectively, "Defendant  
14 Releasees") based on failure to warn about alleged exposures to DEHP resulting from any  
15 Products manufactured, distributed or sold by Defendant ("Covered Claims") on or prior to the  
16 date of entry of this Consent Judgment. CEH, its directors, officers, employees and attorneys  
17 hereby release all Covered Claims against Defendant Releasees. Compliance with the terms of  
18 this Consent Judgment constitutes compliance with Proposition 65 for purposes of exposures to  
19 Listed Phthalates from the Products.

20 **8. SEVERABILITY**

21 **8.1** In the event that any of the provisions of this Consent Judgment are  
22 held by a court to be unenforceable, the validity of the enforceable provisions shall not be  
23 adversely affected.

24 **9. GOVERNING LAW**

1                   **9.1**    The terms of this Consent Judgment shall be governed by the laws of  
2 the State of California.

3                   **10.    RETENTION OF JURISDICTION**

4                   **10.1**    This Court shall retain jurisdiction of this matter to implement and  
5 enforce the terms this Consent Judgment.  
6

7                   **11.    PROVISION OF NOTICE**

8                   **11.1**    All notices required pursuant to this Consent Judgment and  
9 correspondence shall be sent to the following:

10 For CEH:

11                                   Mark N. Todzo  
12                                   Lexington Law Group, LLP  
13                                   1627 Irving Street  
14                                   San Francisco, CA 94122  
15

16 For Defendant:

17                                   Bruce Nye  
18                                   Adams | Nye | Trapani | Becht LLP  
19                                   222 Kearny Street, 7th Floor  
20                                   San Francisco, CA 94108-4521  
21

22                   **12.    COURT APPROVAL**

23                   **12.1**    CEH will comply with the settlement notice provisions of Health and  
24 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

25                   **13.    EXECUTION AND COUNTERPARTS**

26                   **13.1**    The stipulations to this Consent Judgment may be executed in  
27 counterparts and by means of facsimile, which taken together shall be deemed to constitute one  
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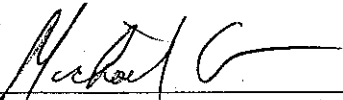
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2 **14. AUTHORIZATION**

3 **14.1** Each signatory to this Consent Judgment certifies that he or she is  
4 fully authorized by the party he or she represents to stipulate to this Consent Judgment and to  
5 enter into and execute the Consent Judgment on behalf of the party represented and legally bind  
6 that party. The undersigned have read, understand and agree to all of the terms and conditions of  
7 this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees  
8 and costs.  
9

10  
11 **AGREED TO:**

12 **CENTER FOR ENVIRONMENTAL HEALTH**

13  
14   
15 \_\_\_\_\_  
16 Michael Green, Executive Director  
17 Center for Environmental Health

Dated: 10/20/08

18 **MAGLA PRODUCTS, LLC**

19 \_\_\_\_\_  
20

Dated: \_\_\_\_\_

21 \_\_\_\_\_  
22 [Name]

23 \_\_\_\_\_  
24 [Title]

1 document.

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7 this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees  
8 and costs.  
9

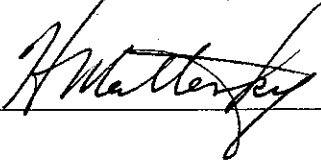
10  
11 **AGREED TO:**

12 **CENTER FOR ENVIRONMENTAL HEALTH**

13  
14  
15 \_\_\_\_\_  
16 Michael Green, Executive Director  
Center for Environmental Health

Dated: \_\_\_\_\_

17  
18 **MAGLA PRODUCTS, LLC**

19   
20 \_\_\_\_\_

Dated: 10/10/08

21 Henry Mattesky

22 [Name]

23 Vice President

24 [Title]

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**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between CEH and Magla Products, LLC, the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: DEC 11 2008

**PAUL H. ALVARADO**  
Judge, Superior Court of the State of California