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CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
San Francisco County Superior Court

DEC 11 2008

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

SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF SAN FRANCISCO

CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

Plaintiff,

v.

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

Defendants.

Case No. CGC-08-473477

(JCR)

**[PROPOSED] CONSENT JUDGMENT RE:
ANSELL HEALTHCARE PRODUCTS,
INC. AND ANSELL HEALTHCARE
PRODUCTS LLC**

1 **1. INTRODUCTION**

2 **1.1** On March 19, 2008, plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint entitled *Center*
4 *for Environmental Health v. Ansell Healthcare Products, Inc., et al.*, San Francisco County
5 Superior Court Case Number CGC-08-473477 (the “CEH Action”), for civil penalties and
6 injunctive relief pursuant to the provisions of Cal. Health & Safety Code § 25249.5, *et seq.*
7 (“Proposition 65”), naming Defendants Ansell Healthcare Products, Inc. and Ansell Healthcare
8 Products LLC (collectively, “Defendants”) as defendants.

9 **1.2** Defendants are corporations that employ 10 or more persons and
10 manufactured, distributed and/or sold vinyl gloves (the “Products”) in the State of California.

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

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

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

15 **2.1 Reformulation Standard – Removal of DEHP.** As of March 1, 2009,
16 Defendants shall not manufacture, distribute, ship, or sell, or cause to be manufactured,
17 distributed or sold, any Product that contains in excess of trace amounts of DEHP. For purposes
18 of this Consent Judgment only, "in excess of trace amounts" is more than 600 parts per million
19 ("ppm"). In reformulating the Products to remove DEHP, Defendants may not use butyl benzyl
20 phthalate ("BBP"), di-n-hexyl phthalate ("DnHP"), di-n-butyl phthalate ("DBP") or di-isodecyl
21 phthalate ("DIDP") in excess of trace amounts. DEHP, BBP, DnHP, DBP and DIDP are together
22 referred to herein as "Listed Phthalates."
23

24 **2.2 Certification From Suppliers.** Defendants shall issue specifications to its
25 suppliers requiring that the Products shall not contain DEHP or any other Listed Phthalate in
26 excess of trace amounts. Defendants shall obtain written certification from its suppliers of the
27 Products certifying that the Products do not contain DEHP.
28

1 **2.3 Defendants' Testing.** In order to ensure compliance with the
2 requirements of Section 2.1, Defendants shall cause to be conducted testing to confirm that the
3 Products do not contain in excess of trace amounts of DEHP. Testing shall be conducted in
4 compliance with Section 2.1. All testing pursuant to this section shall be performed by an
5 independent laboratory in accordance with the following test protocol, Health Canada Protocol,
6 Method C-34, Test Method Section, Book 5 of Laboratory Policies & Procedures, amendment
7 number 46, effective date 2007-07-26, "Determination of Phthalates in Polyvinyl Chloride
8 Consumer Products [referred to as Health Canada Protocol]. At the request of CEH, the results of
9 the testing performed pursuant to this section shall be made available to CEH on a confidential
10 basis.
11

12 **2.3.1 Testing Frequency.** For each of the first two orders of Products
13 purchased from each of Defendants' suppliers after the Compliance Date, Defendants shall
14 randomly select and test the greater of 0.1% (one-tenth of one percent) or eight, but in no case
15 more than ten, of the total Products purchased from each supplier of the Products intended for
16 sale in California. Following the testing of the first two orders as described above, Defendants
17 shall, for each subsequent order, randomly select and test the greater of 0.05% (one-twentieth of
18 one percent) or four, but in no case more than five, of the total Products purchased in that
19 calendar year for sale in California from each supplier of the Products.
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22 **2.3.2 Products That Contain Listed Phthalates Pursuant to**
23 **Defendants' Testing.** If the results of the testing required pursuant to Section 2.3 show Listed
24 Phthalates in excess of trace amounts in a Product, Defendants shall: (1) refuse to accept all of the
25 Products that were purchased under the particular purchase order; (2) send a notice to the supplier
26 explaining that such Products do not comply with the suppliers' certification; and (3) apply the
27 testing frequency set forth in 2.3.1 as though the next shipment from the supplier were the first
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1 one following the Compliance Date.

2 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory
3 testing of the Products. Any such testing shall be conducted by CEH at an independent
4 laboratory, in accordance with the Health Canada Protocol. In the event that CEH's testing
5 demonstrates that the Products contain Listed Phthalates in excess of trace amounts subsequent to
6 the Compliance Date, CEH shall inform Defendants of the test results, including information
7 sufficient to permit Defendants to identify the Product(s). Defendants shall, within 30 days
8 following such notice, provide CEH, at the address listed in Section 11, with the certification and
9 testing information demonstrating its compliance with Sections 2.2 and 2.3 of this Consent
10 Judgment. Defendants may provide CEH with information demonstrating that it complied with
11 Sections 2.2 and/or 2.3. The burden of proof re: questions of compliance shall be on CEH not on
12 the defendants. If CEH proves non compliance, defendants shall be liable for stipulated payments
13 in lieu of penalties for Products for which CEH produces tests demonstrating the presence of
14 Listed Phthalates in the Products. The payments shall be made to CEH and used for the purposes
15 described in Section 3.1.

16 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments
17 in lieu of penalties are warranted under Section 2.4, the stipulated payment amount shall be as
18 follows for each order of Product as described in paragraph 2.3.1 above, for which CEH produces
19 a test result proving that Defendants sold a Product containing Listed Phthalates in excess of 600
20 ppm after the Compliance Date:

21	First Occurrence:	\$500
22	Second Occurrence:	\$750
23	Third Occurrence:	\$1,000
24	Thereafter:	\$2,500

1 **2.5 Products in the Stream of Commerce.** Defendants' Products that have
2 been manufactured, distributed, shipped, sold, or that are otherwise in the stream of commerce
3 prior to the Compliance Date shall be released from any claims that were brought or that could be
4 brought by CEH or others in the Complaint, as though they were Covered Claims within the
5 meaning of Section 7.1, below.

6
7 **3. SETTLEMENT PAYMENTS**

8 **3.1 Monetary Payment in Lieu of Penalty.** Defendants shall pay to CEH
9 \$21,000 in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall use
10 such funds to continue its work protecting people from exposures to toxic chemicals. As part of
11 this work, CEH intends to conduct periodic testing of the Products as set forth in Section 2.4. The
12 payment required under this section shall be made payable to CEH.

13 **3.2 Attorneys' Fees and Costs.** Defendants shall pay \$44,000 to reimburse
14 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
15 other costs incurred as a result of investigating, bringing this matter to Defendants' attention,
16 litigating and negotiating a settlement in the public interest. The payment required under this
17 section shall be made payable to Lexington Law Group, LLP.

18 **3.3 Delivery of Payments.** All payments made pursuant to this Section 3 shall
19 be delivered to the Lexington Law Group, LLP at the address set forth in Section 11.1 and shall
20 be delivered within 10 days of entry of this Consent Judgment.

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23 **4. MODIFICATION OF CONSENT JUDGMENT**

24 **4.1** This Consent Judgment may be modified by written agreement of CEH and
25 Defendants, or upon motion of CEH or Defendants as provided by law.

26 **4.2** Should any other defendant obtain more favorable settlement terms, the
27 terms of this settlement may, on application of defendant, be modified to encompass such terms.
28

1 Any change or repeal in the law governing this matter, by legislation or regulating action, shall
2 constitute good cause for defendant to seek modification of the judgment.

3 **5. ENFORCEMENT OF CONSENT JUDGMENT**

4 **5.1** Either party may, by motion or application for an order to show cause,
5 enforce the terms and conditions contained in this Consent Judgment. The prevailing party on
6 any such motion shall be entitled to recover its reasonable attorneys' fees and costs associated
7 with any enforcement proceedings regarding the Consent Judgment or resisting any order to show
8 cause.
9

10 **6. APPLICATION OF CONSENT JUDGMENT**

11 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
12 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
13 them.
14

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

16 **7.1** This Consent Judgment is a full, final and binding resolution between CEH
17 and Defendants of any violation of Proposition 65 that was or could have been asserted in the
18 Complaint against Defendants (including any claims that could be asserted in connection with any
19 of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates, directors,
20 officers, employees, agents, attorneys, distributors, customers or retailers (collectively,
21 "Defendant Releasees") based on failure to warn about alleged exposures to DEHP resulting from
22 any Products manufactured, distributed or sold by Defendants ("Covered Claims") on or prior to
23 the date of entry of this Consent Judgment. CEH, its directors, officers, employees and attorneys
24 hereby release all Covered Claims against Defendant Releasees. CEH, its directors, officers,
25 employees and attorneys on both their own behalf and on behalf of the Public Interest pursuant to
26 the Health & Safety Code § 25249.7(b) hereby release all Covered Claims against Defendants.
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1 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
2 for purposes of DEHP exposures from the Products.

3 **8. SEVERABILITY**

4 **8.1** In the event that any of the provisions of this Consent Judgment are held by
5 a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
6 affected.
7

8 **9. GOVERNING LAW**

9 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
10 State of California.

11 **10. RETENTION OF JURISDICTION**

12 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
13 the terms this Consent Judgment.
14

15 **11. PROVISION OF NOTICE**

16 **11.1** All notices required pursuant to this Consent Judgment and correspondence
17 shall be sent to the following:

18 For CEH:

19 Mark N. Todzo
20 Lexington Law Group, LLP
21 1627 Irving Street
22 San Francisco, CA 94122
23

24 For Defendants:

25 Michael J. Bonesteel
26 Haight Brown & Bonesteel LLP
27 6080 Center Drive, Suite 800
28

1 Los Angeles, CA 90045
2 and
3 Ansell Legal Department
4 200 Schulz Drive
5 Red Bank, New Jersey 07701
6

7 **12. COURT APPROVAL**

8 **12.1** CEH will comply with the settlement notice provisions of Health and
9 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

10 **13. EXECUTION AND COUNTERPARTS**

11 **13.1** The stipulations to this Consent Judgment may be executed in counterparts
12 and by means of facsimile, which taken together shall be deemed to constitute one document.

13 **14. AUTHORIZATION**

14 **14.1** Each signatory to this Consent Judgment certifies that he or she is fully
15 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into
16 and execute the Consent Judgment on behalf of the party represented and legally bind that party.
17 The undersigned have read, understand and agree to all of the terms and conditions of this
18 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and
19 costs.
20

21 **AGREED TO:**

22 **CENTER FOR ENVIRONMENTAL HEALTH**

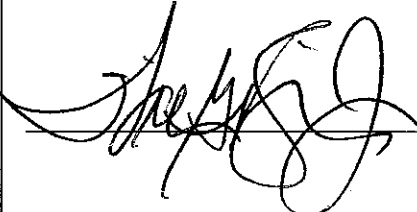
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26 Michael Green, Executive Director
Center for Environmental Health

27 Dated: 10/13/08

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**ANSELL HEALTHCARE PRODUCTS, INC.
ANSELL HEALTHCARE PRODUCTS LLC**



Dated: October 8, 2008

William G. Reilly, Jr.
[Name]

Senior Vice President & General Counsel
[Title]