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10 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
San Francisco County Superior Court

AUG 21 2009

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

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF SAN FRANCISCO

13 CENTER FOR ENVIRONMENTAL
14 HEALTH,

15 Plaintiff,

16 v.

17 ANSELL HEALTHCARE PRODUCTS,
18 INC., et al.,

19 Defendants.

20 Case No. CGC-08-473477

21 ~~PROPOSED~~ CONSENT JUDGMENT
22 RE: PLAYTEX PRODUCTS LLC

1 **1. INTRODUCTION**

2 **1.1** On May 7, 2008, 2008, plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint (“Complaint”)
4 titled *Center for Environmental Health v. Ansell Healthcare Products, Inc., et al.*, San Francisco
5 County Superior Court Case Number CGC-08-473477 (the “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 Playtex Products, Inc. as a defendant.

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

11 **1.3** Beginning on or about October 10, 2007, CEH served Playtex Products, Inc.,
12 the California Attorney General, all California counties’ District Attorneys, and all City Attorneys
13 of California cities with populations exceeding 750,000 with the requisite 60-day notice (the
14 “Notice”) alleging that Playtex Products, Inc. was in violation of Proposition 65. CEH’s Notice and
15 the Complaint in this Action allege that Playtex Products, Inc. exposes people who use or otherwise
16 handle the Products to di(2-ethylhexyl) phthalate (“DEHP”), a chemical known to the State of
17 California to cause cancer, birth defects and other reproductive harm, without first providing clear
18 and reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of
19 DEHP. The Notice and Complaint allege that Playtex Products, Inc.’s conduct violates Health &
20 Safety Code §25249.6, the warning provision of Proposition 65. Playtex Products, Inc. denied the
21 allegations of the Complaint, denied that CEH is entitled to any relief in the Action, asserted various
22 affirmative defenses, and maintained, at all relevant times, that all of its products are safe and in
23 compliance with all applicable laws.

24 **1.4** As of October 1, 2008, Playtex Products LLC became the successor to
25 Playtex Products, Inc. Playtex Products LLC is referred to herein as “Defendant.” Upon entry of
26 this Proposed Consent Judgment (“Consent Judgment”), the Complaint and Notice shall be
27 amended *nunc pro tunc* to substitute Playtex Products LLC as the proper corporate defendant in
28 place of Playtex Products, Inc.

1 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that this
2 Court has jurisdiction over the subject matter of the violations alleged in the Complaint and
3 personal jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in
4 the County of San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a
5 full and final resolution of all claims which were or could have been raised in the Complaint based
6 on the facts alleged therein.

7 **1.6** As of March 31, 2009, Defendant ceased shipping Products for sale or
8 distribution in California. Defendant maintains that any other disposable gloves products that it
9 shipped for sale or distribution in California after March 31, 2009 did not have any intentionally
10 added, and did not contain under any circumstances more than 50 parts per million, DEHP or any
11 other Listed Phthalate (as that term is defined in Section 2.1, below).

12 **1.7** The Parties enter into this Consent Judgment pursuant to a settlement of
13 certain disputed claims between the Parties as alleged in the Complaint. By executing this Consent
14 Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties' intent that
15 nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact,
16 conclusion of law, issue of law or violation of law, nor shall compliance with the Consent Judgment
17 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of
18 law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any
19 right, remedy, argument or defense the Parties may have in this or any other or future legal
20 proceedings.

21 **2. COMPLIANCE - REFORMULATION**

22 **2.1 Phase-Out of Products and Reformulation Standard.** Upon entry of this
23 Consent Judgment, Defendant shall not sell or distribute for sale, in California, or cause to be
24 manufactured, distributed, or sold, in California, any Products. Notwithstanding the foregoing, in
25 the event that Defendant intends in the future to sell or distribute for sale, in California, or cause to
26 be manufactured, distributed, or sold, in California, any Products, Defendant shall provide prior
27 written notice to CEH. Additionally, any such Products shall not contain in excess of trace amounts
28 of DEHP. For purposes of this Consent Judgment only, "in excess of trace amounts" is more than

1 600 ppm. In reformulating the Products to remove DEHP, as applicable, Defendant may not use
2 butyl benzyl phthalate ("BBP"), di-n-hexyl phthalate ("DnHP"), di-n-butyl phthalate ("DBP") or di-
3 isodecyl phthalate ("DIDP") in excess of trace amounts. DEHP, BBP, DnHP, DBP and DIDP are
4 together referred to herein as "Listed Phthalates."

5 **2.1.1 Additional Requirements.** In the event that, in the future,
6 Defendant sells or distributes for sale, in California, or causes to be manufactured, distributed, or
7 sold, in California, any Products, the provisions of Sections 2.1.1.1 through 2.1.1.5 shall apply
8 thereupon.

9 **2.1.1.1 Certification from suppliers.** Defendant shall issue
10 specifications to its suppliers requiring that the Products shall not contain Listed Phthalates in
11 excess of trace amounts. Defendant shall obtain written certification from its suppliers of the
12 Products certifying that the Products do not contain DEHP in excess of trace amounts.

13 **2.1.1.2 Defendant's Testing.** In order to ensure compliance with
14 the requirements of Section 2.1.1.1, Defendant shall cause to be conducted testing to confirm that
15 the Products do not contain in excess of trace amounts of DEHP. All testing pursuant to this section
16 shall be performed by an independent laboratory in accordance with both of the following test
17 protocols: (1) EPA SW8270C and (2) EPA SW3580A (together referred to as the "Test Protocols").
18 For each of the first two orders of Products purchased from each of Defendant's suppliers prior to
19 Defendant's re-entry into the market for vinyl gloves, Defendant shall randomly select and test one
20 glove from each of the greater of 0.1% (one-tenth of one percent) or eight, but in no case more than
21 ten, of the total boxes of Products purchased from each supplier of the Products intended for sale in
22 California. Following the testing of the first two orders as described above, Defendant shall, for
23 each subsequent order, randomly select and test one glove from each of the greater of 0.05% (one-
24 twentieth of one percent) or four, but in no case more than five, of the total boxes Products
25 purchased in that calendar year for sale in California from each supplier of the Products. At the
26 request of CEH, the results of the testing performed pursuant to this section shall be made available
27 to CEH on a confidential basis.

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1 **2.1.1.3 Inadequate Certification or Failed Tests.** If the results
2 of the testing required pursuant to Section 2.1.1.2 show Listed Phthalates in excess of trace amounts
3 in a Product, Defendant shall: (1) refuse to accept all of the Products that were purchased under the
4 particular purchase order; (2) send a notice to the supplier explaining that such Products do not
5 comply with the suppliers' certification; and (3) apply the testing frequency set forth in Section
6 2.1.1.2 as though the next shipment from the supplier were the first one following the Compliance
7 Date.

8 **2.1.1.4 Confirmatory Testing by CEH.** CEH intends to conduct
9 confirmatory testing of the Products. Any such testing shall be conducted by CEH at an
10 independent laboratory, in accordance with both of the Test Protocols. In the event that CEH's
11 testing demonstrates that the Products contain Listed Phthalates in excess of trace amounts, CEH
12 shall inform Defendant of the test results, including information sufficient to permit Defendant to
13 identify the Product(s). Defendant shall, within 30 days following such notice, provide CEH, at the
14 address listed in Section 11, with the certification and testing information demonstrating
15 Defendant's compliance with Sections 2.1.1.1 and 2.1.1.2 of this Consent Judgment. If Defendant
16 fails to provide CEH with information demonstrating that Defendant complied with Sections 2.1.1.1
17 and 2.1.1.2, Defendant shall be liable for stipulated payments in lieu of penalties in accordance with
18 the schedule set forth in Section 2.1.1.5.

19 **2.1.1.5 Stipulated Payments In Lieu of Penalties.** If stipulated
20 payments in lieu of penalties are warranted under section 2.1.3, the stipulated payment amount shall
21 be as follows for each Occurrence of Defendant selling a Product in California containing Listed
22 Phthalates after the Compliance Date:

23 First Occurrence: \$500

24 Second Occurrence: \$750

25 Third Occurrence: \$1,000

26 Thereafter: \$2,500.

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1 In the event that Defendant provides information in accordance with Section 2.1.1.4 that it believes
2 demonstrates its compliance with Sections 2.1.1.1 and 2.1.1.2, and CEH disputes such a claim, then
3 CEH shall have the burden of demonstrating that stipulated penalties are warranted by proving
4 noncompliance with Sections 2.1.1.1 and 2.1.1.2 by a preponderance of the evidence. As used in
5 this section 2.4.1, an "Occurrence" is the sale in California of any number of Products from the
6 same lot containing Listed Phthalates.

7 **2.2 Products in the Stream of Commerce.** Any Products that have been
8 manufactured, distributed, shipped, or sold, or that are otherwise in the stream of commerce prior to
9 entry of the Consent Judgment shall be released from any claims that were brought or that could be
10 brought by CEH in the Complaint, as though they were Covered Claims within the meaning of
11 Section 7.1, below. As a result, the obligations of this Section 2 do not apply to such Products.

12 **3. SETTLEMENT PAYMENTS**

13 **3.1 Penalty.** Defendant shall pay \$1,000 (One Thousand Dollars) as a civil
14 penalty pursuant to Health and Safety Code §25249.7(b). The penalty shall be made payable to
15 CEH, which will apportion the penalty in accordance with Health and Safety Code §25249.12.

16 **3.2 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
17 \$13,500 (Thirteen Thousand Five Hundred Dollars) in lieu of any penalty pursuant to Health and
18 Safety Code §25249.7(b). The payment required under this section shall be made payable to CEH.

19 **3.3 Attorneys' Fees and Costs.** Defendant shall pay \$28,000 (Twenty-Eight
20 Thousand Dollars) to reimburse CEH and its attorneys for their reasonable investigation fees and
21 costs, attorneys' fees, and any other costs incurred as a result of investigating, bringing this matter
22 to Defendant's attention, litigating and negotiating a settlement in the public interest. The payment
23 required under this section shall be made payable to Lexington Law Group, LLP.

24 **3.4 Delivery of payments.** All of the payments made pursuant to this Section 3
25 shall be delivered to the Lexington Law Group, LLP at the address set forth in section 11.1 and
26 shall be delivered within 15 days following entry of this Consent Judgment.

27 **4. MODIFICATION OF CONSENT JUDGMENT**

28 **4.1** This Consent Judgment may be modified by written agreement of

1 CEH and Defendant, or upon motion of CEH or Defendant as provided by law. Grounds for such
2 modification include, but are not limited to, any change in law that would (1) render Proposition 65
3 inapplicable to the Products or DEHP or (2) establish a compliance standard that would allow
4 concentrations of DEHP in the Products to exceed 600 ppm without a Proposition 65 warning.

5 **5. ENFORCEMENT OF CONSENT JUDGMENT**

6 **5.1** The Parties may, by motion or application for an order to show cause, enforce
7 the terms and conditions contained in this Consent Judgment. The prevailing Party on any such
8 motion shall be entitled to recover its reasonable attorneys' fees and costs associated with enforcing
9 the Consent Judgment, or defending itself from a false claim that it is in violation of the Consent
10 Judgment.

11 **6. APPLICATION OF CONSENT JUDGMENT**

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

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

15 **7.1** This Consent Judgment is a full, final and binding resolution between CEH
16 acting on behalf of itself and in the public interest pursuant to Health and Safety Code section
17 25249.7(d) and on behalf of the public pursuant to Business & Professions Code sections 17200 *et*
18 *seq.* and 17500 *et seq.*, and Defendant, of any violation of Proposition 65, Business & Professions
19 Code sections 17200 *et seq.* and 17500 *et seq.*, that was or could have been asserted in the Notice
20 and/or Complaint against Defendant (including any claims that could be asserted in connection with
21 any of the Products covered by this Consent Judgment) or its past, present or future parents,
22 subsidiaries, affiliates (including, but not limited to, Energizer Personal Care, LLC), divisions,
23 predecessors (including, but not limited to, Playtex Products, Inc.), successors, officers, directors,
24 representatives, agents, employees, shareholders, owners, licensors, licensees, franchisors,
25 franchisees, wholesalers, distributors, customers, retailers, and each of their respective parents,
26 subsidiaries, affiliates, divisions, predecessors, successors, officers, directors, representatives,
27 agents, employees, shareholders, owners, licensors, licensees, franchisors, franchisees, wholesalers,
28 distributors, customers, and retailers, (collectively "Defendant Releasees"), based on failure to warn

1 about alleged exposures to DEHP resulting from any Products manufactured, distributed or sold by
2 Defendant or its predecessor ("Covered Claims"), prior to the date of entry of this Consent
3 Judgment, subject to Section 2.2. CEH, its directors, officers, employees and attorneys hereby
4 release all Covered Claims against Defendant and Defendant Releasees. Compliance with the terms
5 of this Consent Judgment constitutes compliance with Proposition 65 from the date of entry of this
6 Consent Judgment into the future by Defendant and Defendant Releasees for purposes of exposures
7 to Listed Phthalates from the Products.

8 **7.2** In furtherance of the foregoing, CEH hereby waives any and all rights and
9 benefits which it now has, or in the future may have, conferred upon it with respect to DEHP
10 exposures from the Products by virtue of the provisions of Section 1542 of the California Civil
11 Code, which provides as follows:

12 " A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
13 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
14 EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING
15 THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST
16 HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT
17 WITH THE DEBTOR."

18 CEH understands and acknowledges that the significance and consequence of this waiver of
19 California Civil Code Section 1542 is that even if CEH suffers future damages arising out of or
20 resulting from, or related directly or indirectly to, in whole or in part, exposures to Listed Phthalates
21 from the Products manufactured and placed in the stream of commerce prior to the date of this
22 release ("Future Claims"), it will not be able to make any claim for those damages against
23 Defendant or any Defendant Releasees. Furthermore, CEH acknowledges that it intends these
24 consequences for any such Future Claims which may exist as of the date of this release but which
25 CEH does not know exist, and which, if known, would materially affect its decision to enter into
26 this Consent Judgment, regardless of whether its lack of knowledge is the result of ignorance,
27 oversight, error, negligence, or any other cause. Nothing in this section limits or in any way affects
28 Defendant's obligations or CEH's remedies under this Consent Judgment.

8. **SEVERABILITY**

8.1 In the event that any of the provisions of this Consent Judgment are

1 held by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
2 affected.

3 **9. GOVERNING LAW**

4 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
5 State of California.

6 **10. RETENTION OF JURISDICTION**

7 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
8 the terms this Consent Judgment.

9 **11. PROVISION OF NOTICE**

10 **11.1** All notices required pursuant to this Consent Judgment and correspondence
11 shall be sent to the following:

12 For CEH:

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

17 For Defendant:

18 Trenton H. Norris
19 Arnold & Porter, LLP
20 275 Battery Street, Suite 2700
21 San Francisco, CA 94111

22 Robert W. Welsh
23 Vice President
24 Energizer Personal Care, LLC
25 6 Research Drive
26 Shelton, CT 06484

27 **12. COURT APPROVAL**

28 **12.1** CEH will comply with the settlement notice provisions of Health and Safety
Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003. If this Consent
Judgment is not approved and entered by the Court, it shall be of no force or effect, and cannot be
used in any proceeding for any purpose.

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1 **13. EXECUTION AND COUNTERPARTS**

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

4 **14. AUTHORIZATION**

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

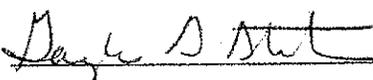
10 **AGREED TO:**

11 **CENTER FOR ENVIRONMENTAL HEALTH**

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

Dated: 7/2/09

17
18 **PLAYTEX PRODUCTS LLC**

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20 _____
21 Gayle G. Stratmann
22 [Name]
23 VP & General Counsel
24 [Title]

Dated: 6/24/09

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ORDER AND JUDGMENT

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

DATED: **AUG 2 1 2009**

PETER J. BUSCH

JUDGE OF THE SUPERIOR COURT