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ENDORSED
FILED
San Francisco County Superior Court

MAR 18 2009

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

6 Attorneys for Plaintiff
7 CENTER FOR ENVIRONMENTAL HEALTH
8

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

13 CENTER FOR ENVIRONMENTAL HEALTH,)
14 a non-profit corporation,)

Case No. CGC-08-473477

15 Plaintiff,)

(JCR)
~~PROPOSED~~ CONSENT JUDGMENT
RE: TRIMACO, LLC

16 v.)
17)

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

20 Defendants.)
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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 “Complaint”), for civil penalties and
6 injunctive relief pursuant to the provisions of Cal. Health & Safety Code § 25249.5, *et seq.*
7 (“Proposition 65”). On August 29, 2008, CEH amended the Complaint to name Trimaco, LLC
8 (“Defendant”) as a defendant.

9 **1.2** Defendant is a corporation that employs 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 June 5, 2008, CEH served Defendant and the appropriate
12 public enforcement agencies with the requisite 60-day Notice (the “Notice”) alleging that
13 Defendant was in violation of Proposition 65 due to use and/or handling of the Products by
14 California consumers. CEH’s Notice and the Complaint in the CEH Action allege that
15 Defendant exposes people who use or otherwise handle the Products to di(2-ethylhexyl)
16 phthalate (“DEHP”), a chemical known to the State of California to cause cancer, birth defects
17 and other reproductive harm, without first providing clear and reasonable warning to such
18 persons regarding the carcinogenicity and reproductive toxicity of DEHP. The Notice and
19 Complaint allege that Defendant’s conduct violates Health & Safety Code § 25249.6, the
20 warning provision of Proposition 65.

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 Defendant 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
25 Judgment as a full and final resolution of all claims which were or could have been raised in the
26 Complaint based on the facts alleged therein.

27 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
28 certain disputed claims between the Parties as alleged in the Complaint. By executing this

1 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'
2 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
3 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
4 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
5 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
6 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
7 any other or future legal proceedings.

8 **2. COMPLIANCE - REFORMULATION**

9 **2.1 Reformulation Standard – Removal of DEHP.** After 60-days following
10 the entry of this Consent Judgment (the “Compliance Date”), Defendant shall not manufacture,
11 distribute, ship, or sell, or cause to be manufactured, distributed or sold on its behalf, any
12 Product that contains in excess of trace amounts of DEHP. For purposes of this Consent
13 Judgment only, “in excess of trace amounts” is more than 600 parts per million (“ppm”). In
14 reformulating the Products to remove DEHP, Defendant may not use butyl benzyl phthalate
15 (“BBP”), di-n-hexyl phthalate (“DnHP”), di-n-butyl phthalate (“DBP”) or di-isodecyl phthalate
16 (“DIDP”) in excess of trace amounts. DEHP, BBP, DnHP, DBP and DIDP are together referred
17 to herein as “Listed Phthalates.”

18 **2.2 Certification From Suppliers.** For so long as Defendant manufactures,
19 distributes, ships, or sells the Products for sale to California consumers, Defendant shall issue
20 specifications to its suppliers requiring that the Products shall not contain DEHP or any other
21 Listed Phthalate in excess of trace amounts. Defendant shall obtain written certification from its
22 suppliers of the Products certifying that the Products do not contain DEHP in excess of trace
23 amounts.

24 **2.3 Defendant’s Testing.** In order to ensure compliance with the
25 requirements of Section 2.1, Defendant shall cause to be conducted testing to confirm that
26 Products shipped for sale to California consumers do not contain in excess of trace amounts of
27 DEHP. Testing shall be conducted in compliance with Section 2.1. All testing pursuant to this
28 section shall be performed by an independent laboratory in accordance with both of the

1 following test protocols: (1) EPA SW8270C; and (2) EPA SW3580A (together referred to as the
2 “Test Protocols”). The results of the testing performed pursuant to this section shall be made
3 available to CEH upon request.

4 **2.3.1 Testing Frequency.** For each of the first two orders of Products
5 purchased from each of Defendant’s suppliers after the Compliance Date, Defendant shall
6 randomly select and test the greater of 0.1% (one-tenth of one percent) or eight, but in no case
7 more than ten, of the total Products purchased from each supplier of the Products intended for
8 sale in California. Following the testing of the first two orders as described above, Defendant
9 shall, for each subsequent order, randomly select and test the greater of 0.05% (one-twentieth of
10 one percent) or four, but in no case more than five, of the total Products purchased in that
11 calendar year for sale in California from each supplier of the Products. Should Defendant stop
12 selling or causing to be sold Products in California, the testing requirements of Section 2.3 shall
13 cease to apply. However, should Defendant begin such sales again, Defendant shall begin
14 testing again, and shall apply the testing frequency set forth in 2.3.1 as though the first shipment
15 following Defendant’s re-initiation of Product sales were the first one following the Compliance
16 Date.

17 **2.3.2 Products That Contain Listed Phthalates Pursuant to**
18 **Defendant’s Testing.** If the results of the testing required pursuant to Section 2.3 show Listed
19 Phthalates in excess of trace amounts in a Product, Defendant shall: (1) refuse to accept all of the
20 Products that were purchased under the particular purchase order; (2) send a notice to the
21 supplier explaining that such Products do not comply with either Defendant’s specifications for
22 Listed Phthalates or the suppliers’ certification; and (3) apply the testing frequency set forth in
23 2.3.1 as though the next shipment from the supplier were the first one following the Compliance
24 Date.

25 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory
26 testing of the Products sold in California. Any such testing shall be conducted by CEH at an
27 independent laboratory, in accordance with both of the Test Protocols. In the event that CEH’s
28 testing demonstrates that the Products shipped by Defendant subsequent to the Compliance Date

1 contain Listed Phthalates in excess of trace amounts, CEH shall inform Defendant of the test
2 results, including information sufficient to permit Defendant to identify the Product(s).
3 Defendant shall, within 30 days following such notice, provide CEH, at the address listed in
4 Section 11, with the certification and testing information demonstrating its compliance with
5 Sections 2.2 and 2.3 of this Consent Judgment. If Defendant fails to provide CEH with
6 information demonstrating that it complied with Sections 2.2 and/or 2.3 or otherwise fails to
7 identify an error in CEH's test results, which error caused CEH erroneously to conclude a
8 Product did not comply with this Consent Judgment, Defendant shall be liable for stipulated
9 payments in lieu of penalties for Products for which CEH produces tests demonstrating the
10 presence of Listed Phthalates in the Products. The payments shall be made to CEH and used for
11 the purposes described in Section 3.1.

12 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated
13 payments in lieu of penalties are warranted under section 2.4, the stipulated payment amount
14 shall be as follows for each unit of Product for which CEH produces a test result showing that
15 Defendant sold that Product containing Listed Phthalates after the Compliance Date:

16	First Occurrence:	\$500
17	Second Occurrence:	\$750
18	Third Occurrence:	\$1,000
19	Thereafter:	\$2,500

20 **2.5 Products in the Stream of Commerce.** Defendant's Products that have
21 been manufactured, distributed, shipped, sold, or that are otherwise in the stream of commerce
22 prior to the Compliance Date shall be released from any claims that were brought or that could
23 be brought by CEH in the Complaint, as though they were Covered Claims within the meaning
24 of Section 7.1, below. As a result, the stipulated payments and other obligations of this Section
25 do not apply to these Products.

26 **3. SETTLEMENT PAYMENTS**

27 **3.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
28 \$8,250 in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall use

1 such funds to continue its work protecting people from exposures to toxic chemicals. As part of
2 this work, CEH intends to conduct periodic testing of the Products as set forth in Section 2.4.
3 The payment required under this section shall be made payable to CEH.

4 **3.2 Attorneys' Fees and Costs.** Defendant shall pay \$16,750 to reimburse
5 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
6 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,
7 litigating and negotiating a settlement in the public interest. The payment required under this
8 section shall be made payable to Lexington Law Group, LLP.

9 **3.3 Delivery of payments.** All payments made pursuant to this Section 3
10 shall be delivered to the Lexington Law Group, LLP at the address set forth in Section 11.1 and
11 shall be delivered within 10 days of entry of this Consent Judgment.

12 **4. MODIFICATION OF CONSENT JUDGMENT**

13 **4.1** This Consent Judgment may be modified by written agreement of CEH
14 and Defendant, or upon motion of CEH or Defendant as provided by law.

15 **5. ENFORCEMENT OF CONSENT JUDGMENT**

16 **5.1** The Parties may, by motion or application for an order to show cause,
17 enforce the terms and conditions contained in this Consent Judgment. The prevailing party in
18 any such motion shall be entitled to recover its reasonable attorneys' fees and costs associated
19 with enforcing the Consent Judgment.

20 **6. APPLICATION OF CONSENT JUDGMENT**

21 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
22 hereto, their divisions, subdivisions, parents and subsidiaries, and the predecessors, successors or
23 assigns of any of them.

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

25 **7.1** This Consent Judgment is a full, final and binding resolution between
26 CEH, both on its own behalf and on behalf of the public interest pursuant to Health & Safety
27 Code § 25249.7(d), and Defendant of any violation of Proposition 65 that was or could have
28 been asserted in the Complaint against Defendant (including any claims that could be asserted in

1 connection with any of the Products covered by this Consent Judgment) or its parents,
2 subsidiaries, affiliates, directors, officers, employees, agents, attorneys, suppliers, distributors,
3 customers or retailers (collectively, "Defendant Releasees") based on failure to warn about
4 alleged exposures to DEHP resulting from any Products manufactured, distributed or sold by
5 Defendant ("Covered Claims") on or prior to the date of entry of this Consent Judgment. CEH,
6 its directors, officers, employees and attorneys, both on its own behalf and on behalf of the
7 public interest pursuant to Health & Safety Code § 25249.7(d), hereby release all Covered
8 Claims against Defendant Releasees. Compliance with the terms of this Consent Judgment
9 constitutes compliance with Proposition 65 for purposes of DEHP exposures from the Products.

10 **8. SEVERABILITY**

11 **8.1** In the event that any of the provisions of this Consent Judgment are held
12 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
13 affected.

14 **9. GOVERNING LAW**

15 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
16 State of California.

17 **10. RETENTION OF JURISDICTION**

18 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
19 the terms this Consent Judgment.

20 **11. PROVISION OF NOTICE**

21 **11.1** All notices required pursuant to this Consent Judgment and
22 correspondence shall be sent to the following:

23 For CEH:

24 Howard Hirsch
25 Lexington Law Group, LLP
26 1627 Irving Street
27 San Francisco, CA 94122
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1 For Defendant:

2 Michael E. Gallagher, Jr.
3 Dongell Lawrence Finney LLP
4 707 Wilshire Boulevard, 45th Floor
5 Los Angeles, California 90017

6 **12. COURT APPROVAL**

7 **12.1** CEH will comply with the settlement notice provisions of Health and
8 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

9 **13. EXECUTION AND COUNTERPARTS**

10 **13.1** The stipulations to this Consent Judgment may be executed in
11 counterparts and by means of facsimile, which taken together shall be deemed to constitute one
12 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
16 into and execute the Consent Judgment on behalf of the party represented and legally bind that
17 party. 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 **AGREED TO:**

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22 **CENTER FOR ENVIRONMENTAL HEALTH**

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24 _____
25 Charlie Pizarro, Associate Director
26 Center for Environmental Health

27 Dated: 1/12/09

1 TRIMACO, LLC

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Dated: 1/12/2009

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Drew W. Cook

Name:

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Chief Financial Officer

Title:

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1 **ORDER AND JUDGMENT**

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

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6 Dated: MAR 18 2009

7 **PETER J. BUSCH**

8 Judge, Superior Court of the State of California
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