

1 LEXINGTON LAW GROUP, LLP  
Mark N. Todzo, State Bar No. 168389  
2 Eric S. Somers, State Bar No. 139050  
3 Lisa Burger, State Bar No. 239676  
1627 Irving Street  
San Francisco, CA 94122  
4 Telephone: (415) 759-4111  
Facsimile: (415) 759-4112

5 Attorneys for Plaintiff  
6 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED  
**FILED**  
San Francisco County Superior Court

MAY 19 2009

GORDON PARK-LI, Clerk  
BY MARJORIE SCHWARTZ-SCOTT  
Deputy Clerk

7  
8  
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 Defendants.  
18

Case No. CGC-08-473477

~~[PROPOSED]~~ **CONSENT JUDGMENT**  
**RE: MEDLINE INDUSTRIES, INC.**

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"). On August 29, 2008, CEH amended the Complaint to name Medline  
8 Industries, Inc. ("Defendant") as a defendant.

9  
10           **1.2**     Defendant is a corporation that employs 10 or more persons and  
11 manufactured, distributed and/or sold vinyl gloves in the State of California. As used in this  
12 Consent Judgment, "Products" refers to vinyl gloves manufactured, distributed and/or sold by  
13 Defendant for use in the State of California.

14  
15           **1.3**     On or about June 5, 2008, CEH served Defendant and the appropriate  
16 public enforcement agencies with the requisite 60-day Notice (the "Notice") alleging that  
17 Defendant was in violation of Proposition 65. CEH's Notice and the Complaint in the CEH  
18 Action allege that Defendant exposes people who use or otherwise handle the Products to  
19 di(2ethylhexyl) phthalate ("DEHP"), a chemical known to the State of California to cause cancer,  
20 birth defects and other reproductive harm, without first providing clear and reasonable warning to  
21 such persons regarding the carcinogenicity and reproductive toxicity of DEHP. The Notice and  
22 Complaint allege that Defendant's conduct violates Health & Safety Code § 25249.6, the warning  
23 provision of Proposition 65. Defendant disputes such allegations and asserts that all of its  
24 products are safe and comply with all applicable laws.

25  
26           **1.4**     For purposes of this Consent Judgment only, the parties stipulate that this  
27 Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint and  
28

1 personal jurisdiction over Defendant as to the acts alleged in CEH's Complaint, that venue is  
2 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent  
3 Judgment as a full and final resolution of all claims which were or could have been raised in the  
4 Complaint based on  
5 the facts alleged therein.

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

17           **2.       COMPLIANCE - REFORMULATION**

18           **2.1     Reformulation Standard - Removal of DEHP.** After 60-days following  
19 the entry of this Consent Judgment (the "Compliance Date"), Defendant shall not manufacture for  
20 sale or distribution in California, distribute, ship, or sell in the State of California, or cause to be  
21 manufactured for sale or distribution in California or cause to be distributed or sold in California,  
22 any Product that contains in excess of trace amounts of DEHP. For purposes of this Consent  
23 Judgment only, "in excess of trace amounts" is more than 600 parts per million ("ppm"). In  
24 reformulating the Products to remove DEHP, Defendant may not use butyl benzyl phthalate  
25 ("BBP"), di-n-hexyl phthalate ("DnHP"), di-n-butyl phthalate ("DBP") or di-isodecyl phthalate  
26 ("DIDP") in excess of trace amounts. DEHP, BBP, DnHP, DBP and DIDP are together referred to  
27  
28

1 herein as "Listed Phthalates."

2           **2.2 Certification From Suppliers.** Defendant shall issue specifications to its  
3 suppliers requiring that the Products shall not contain DEHP or any other Listed Phthalate in  
4 excess of trace amounts. Defendant shall obtain written certification from its suppliers of the  
5 Products certifying that the Products do not contain DEHP.  
6

7           **2.3 Defendant's Testing.** In order to ensure compliance with the  
8 requirements of Section 2.1, Defendant shall cause to be conducted testing to confirm that the  
9 Products do not contain in excess of trace amounts of DEHP. Testing shall be conducted in  
10 compliance with Section 2.1. All testing pursuant to this section shall be performed by an  
11 independent laboratory in accordance with one of the following test protocols: (1) EPA SW8270C  
12 and EPA SW3580A; or (2) ASTM D3421-75 or its equivalent (together referred to as the "Test  
13 Protocols"). At the request of CEH, the results of the testing performed pursuant to this section  
14 shall be made available to CEH on a confidential basis.  
15

16           **2.3.1 Testing Frequency – Current Suppliers.** For the first, second,  
17 fourth, eighth, fifteenth, thirtieth and fiftieth orders of Products purchased from Defendant's  
18 current supplier after the Compliance Date, Defendant shall require such supplier to randomly  
19 select and test three gloves from each order. As used in this Consent Judgment, the "Current  
20 Supplier" is a supplier who provided Products to Defendant before the Compliance Date.  
21

22           **2.3.2 Testing Frequency – Additional Suppliers.** If Defendant  
23 purchases products from one or more Additional Suppliers, then in addition to the certification  
24 required of such suppliers pursuant to section 2.2, Defendant shall randomly select and test three  
25 gloves from the first and fifth orders. As used in this Consent Judgment, "Additional Suppliers"  
26 are those who provide products to Defendant on or after, but not before the Compliance Date.  
27 This requirement will remain in effect for any Additional Suppliers from whom Defendant  
28

1 purchases products for four years after the Compliance Date.

2                   **2.3.3 Traceability of Products.** Beginning with the first container  
3 received after the Compliance Date (or earlier, should Defendant so choose), Defendant shall  
4 require its suppliers to incorporate a means of product traceability into its packaging or labeling.  
5 As used in this Consent Judgment, “product traceability” means a printed code on the packaging  
6 or other means that allows Defendant to determine the supplier of a Product from examining the  
7 packaging or labeling. Beginning with the first order from any additional supplier, Defendant  
8 shall require its additional suppliers to incorporate a means of product traceability into its  
9 packaging or labeling. Defendant shall notify CEH of the element of such coding that indicates  
10 the products were shipped after the Compliance Date.  
11

12                   **2.3.4 Inadequate Certification or Failed Tests.** If the results of the  
13 testing required pursuant to Section 2.3 show Listed Phthalates in excess of trace amounts in a  
14 Product, Defendant shall: (1) refuse to accept all of the Products that were purchased under the  
15 particular purchase order; (2) send a notice to the supplier explaining that such Products do not  
16 comply with the suppliers' certification; and (3) apply the testing frequency set forth in 2.3.1 or  
17 2.3.2, as appropriate, as though the next shipment from the supplier were the first one following  
18 the Compliance Date.  
19

20                   **2.3.5** Should Defendant no longer manufacture the Products for  
21 distribution or sale in California, distribute, ship, or sell the Products in California, or cause the  
22 Products to be manufactured for distribution or sale in California or distributed or sold in  
23 California, the testing requirements of Section 2.3 shall no longer apply. Moreover, this Consent  
24 Judgment shall not require testing of any Products sold or distributed more than four years after  
25 the Compliance date.  
26

27                   **2.4 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory  
28

1 testing of the Products at its own expense. However, so long as Defendant complies with the  
2 requirements of Section 2.3.3 of this Consent Judgment, concerning traceability, CEH shall not  
3 base a claim of non-compliance on any tests of products which bear package coding indicating  
4 they were manufactured before the Compliance Date. Any testing by CEH shall be conducted at  
5 an independent laboratory, in accordance with the Test Protocols. In the event that such testing  
6 demonstrates that the Products contain Listed Phthalates in excess of trace amounts, CEH shall  
7 provide Defendant with the test results, including information sufficient to permit Defendant to  
8 identify the Product(s). CEH shall also provide Defendant with packaging from such allegedly  
9 non-compliant product(s) and a sample of remaining, untested product from the same package as  
10 the allegedly non-compliant product(s). Defendant shall, within 30 days following receipt of such  
11 notice and the remaining product(s) and packaging, provide CEH with an explanation regarding  
12 the presence of Listed Phthalates in the Products or such other evidence as Defendant believes  
13 establishes that the allegedly non-compliant product(s) were in compliance with this Consent  
14 Judgment. Unless Defendant provides CEH with information sufficient to demonstrate that CEH's  
15 test result was incorrect, Defendant shall be liable for stipulated payments in lieu of penalties for  
16 Products for which CEH produces tests demonstrating the presence of Listed Phthalates in the  
17 Products. The payments shall be made to CEH and used for the purposes described in Section 3.1.

18  
19  
20  
21 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments  
22 in lieu of penalties are warranted under section 2.1.3, the stipulated payment amount shall be as  
23 follows for each Occurrence of Defendant selling a Product in California containing Listed  
24 Phthalates after the Compliance Date:

25 First Occurrence: \$500

26 Second Occurrence: \$750

27 Third Occurrence: \$1,000  
28

1                   Thereafter: \$2,500.

2                   As used in this section 2.4.1, an "Occurrence" is the sale in California of any number of  
3 Products from the same lot containing Listed Phthalates.

4                   **3.       SETTLEMENT PAYMENTS**

5                   **3.1       Penalty.** Defendant shall pay \$5,000 as a civil penalty pursuant to Health  
6 and Safety Code §25249.7(b). The penalty shall be made payable to CEH, which will apportion  
7 the penalty in accordance with Health and Safety Code §25249.12.

8                   **3.2       Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH  
9 \$27,000 in lieu of any additional penalty pursuant to Health and Safety Code § 25249.7(b). CEH  
10 shall use such funds to continue its work protecting people from exposures to toxic chemicals. As  
11 part of this work, CEH intends to conduct periodic testing of the Products as set forth in Section  
12 2.4. The payment required under this section shall be made payable to CEH.

13                   **3.3       Attorneys' Fees and Costs.** Defendant shall pay \$58,000 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 Defendant's 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                   **3.4       Delivery of payments.** All payments made pursuant to this Section 3  
19 shall be delivered to the Lexington Law Group, LLP at the address set forth in Section 11.1 and  
20 shall be delivered within 10 days of entry of this Consent Judgment.

21                   **4.       MODIFICATION OF CONSENT JUDGMENT**

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

24                   **4.1.1.** Should a final and non-appealable published decision of any State  
25  
26  
27  
28

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

7 **4.1.2** Should the obligations with respect to Listed Phthalates imposed by  
8 an agreement with CEH on a manufacturer or distributor of Products that is similarly situated  
9 with Defendant be made less stringent as a result of the amendment, repeal or preemption of  
10 Proposition 65 or any other statute, or of the lists of chemicals established pursuant to Cal. Health  
11 & Safety Code §25249.8, then such amendment, repeal or preemption will constitute good cause  
12 for modification of this Consent Judgment.  
13

14 **4.1.3 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 **4.1.4** 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

1 the 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 Parties  
6 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of  
7 them.  
8

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

10 **7.1** This Consent Judgment is a full, final and binding resolution between  
11 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in the  
12 Complaint against Defendant (including any claims that could be asserted in connection with any  
13 of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates, directors,  
14 officers, employees, agents, attorneys, distributors, customers or retailers (collectively "Defendant  
15 Releasees") based on failure to warn about alleged exposures to DEHP resulting from any  
16 Products manufactured, distributed or sold by Defendant ("Covered Claims") on or prior to the  
17 date of entry of this Consent Judgment. CEH, its directors, officers, employees and attorneys  
18 hereby release all Covered Claims against Defendant Releasees. Compliance with the terms of  
19 this Consent Judgment constitutes compliance with Proposition 65 for purposes of DEHP  
20 exposures from the Products.  
21  
22

23 **8. SEVERABILITY**

24 **8.1** In the event that any of the provisions of this Consent Judgment are held  
25 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
26 affected.  
27  
28

1           **9. GOVERNING LAW**

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

4           **10. RETENTION OF JURISDICTION**

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

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

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

15                               Bruce Nye  
16                               Adams | Nye | Trapani | Becht, LLP  
17                               222 Kearny St., Seventh Floor  
18                               San Francisco, CA 94108

19           **12. COURT APPROVAL**

20           **12.1** CEH will comply with the settlement notice provisions of Health and  
21 Safety Code § 25249.7(f) and Title II of the California Code of Regulations § 3003.

22           **13. EXECUTION AND COUNTERPARTS**

23           **13.1** The stipulations to this Consent Judgment may be executed in counterparts  
24 and by means of facsimile, which taken together shall be deemed to constitute one document.

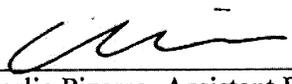
25           **14. AUTHORIZATION**

26           **14.1** Each signatory to this Consent Judgment certifies that he or she is fully  
27 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter  
28 into and execute the Consent Judgment on behalf of the party represented and legally bind that

1 party. The undersigned have read, understand and agree to all of the terms and conditions of this  
2 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and  
3 costs.

4 **AGREED TO:**

5 **CENTER FOR ENVIRONMENTAL HEALTH**

6  
7  
8   
9 \_\_\_\_\_  
Charlie Pizarro, Assistant Director  
Center for Environmental Health

Dated: 3/20/09

10  
11 **MEDLINE INDUSTRIES, INC.**

12  
13 \_\_\_\_\_

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

14  
15 \_\_\_\_\_  
[Name]

16  
17 \_\_\_\_\_  
[Title]

1 party. The undersigned have read, understand and agree to all of the terms and conditions of this  
2 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and  
3 costs.

4 **AGREED TO:**

5 **CENTER FOR ENVIRONMENTAL HEALTH**

6  
7  
8 \_\_\_\_\_  
9 Charlie Pizarro, Assistant Director  
10 Center for Environmental Health

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

11 **MEDLINE INDUSTRIES, INC.**

12  
13 \_\_\_\_\_  
14 *Alex H. Berman*

Dated: 3/25/09

15 \_\_\_\_\_  
16 *Alex H. Berman*  
17 [Name]

18 \_\_\_\_\_  
19 *General Counsel*  
20 [Title]

21  
22  
23  
24  
25  
26  
27  
28

