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6 CENTER FOR ENVIRONMENTAL HEALTH

**ENDORSED
FILED**
San Francisco County Superior Court

JUL 09 2009

GORDON PARK-LI, Clerk
BY: JHULIE POSE
Deputy Clerk

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

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

14 Plaintiff,)

15 v.)

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

19 Defendants.)
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Case No. CGC-08-473477

~~PROPOSED~~ CONSENT JUDGMENT
RE: LITTLE RAPIDS CORPORATION
DBA GRAHAM PROFESSIONAL
PRODUCTS

1 **1. INTRODUCTION**

2 **1.1** On March 19, 2008, plaintiff 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 October 21, 2008, the Complaint in the CEH Action was amended to
8 name Little Rapids Corporation dba Graham Professional Products (“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. The Notice also alleged that Sally Beauty
14 Holdings, Inc. was in violation of Proposition 65 due, in part, to its sale of Defendant’s Products.
15 On March 3, 2009, CEH served an additional notice alleging that Sally Beauty Supply, LLC was
16 in violation of Proposition 65 due, in part, to its sale of Defendant’s Products. CEH’s Notice and
17 the Complaint in the CEH Action allege that Defendant exposes people who use or otherwise
18 handle the Products to di(2-ethylhexyl) phthalate (“DEHP”), a chemical known to the State of
19 California to cause cancer, birth defects and other reproductive harm, without first providing
20 clear and reasonable warning to such persons regarding the carcinogenicity and reproductive
21 toxicity of DEHP. The Notice and Complaint allege that Defendant’s conduct violates Health &
22 Safety Code § 25249.6, the warning provision of Proposition 65. Defendant disputes such
23 allegations and asserts that all of its products are safe and comply with all applicable laws.

24 **1.4** For purposes of this Consent Judgment only, the parties stipulate that this
25 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and
26 personal jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue is
27 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent
28 Judgment as a full and final resolution of all claims which were or could have been raised in the

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 **2. COMPLIANCE - REFORMULATION**

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

21 **2.2 Certification From Suppliers.** Defendant shall issue specifications to its
22 suppliers requiring that the Products shall not contain any Listed Phthalate in excess of trace
23 amounts. Defendant shall obtain written certification from its suppliers of the Products certifying
24 that the Products do not contain any Listed Phthalate in excess of trace amounts.

25 **2.3 Defendant's Testing.** In order to ensure compliance with the
26 requirements of Section 2.1, Defendant shall cause to be conducted testing to confirm that the
27 Products do not contain any Listed Phthalate in excess of trace amounts. Testing shall be
28 conducted in compliance with Section 2.1. All testing pursuant to this Section shall be

1 performed by an independent laboratory in accordance with both of the following test protocols:
2 (1) EPA SW8270C; and (2) EPA SW3580A (together referred to as the "Test Protocols"). At the
3 request of CEH, the results of the testing performed pursuant to this section shall be made
4 available to CEH on a confidential basis.

5 **2.3.1 Testing Frequency.** For each of the first two orders of Products
6 purchased from each of Defendant's suppliers after the Compliance Date, Defendant shall
7 randomly select and test the greater of 0.1% (one-tenth of one percent) or eight, but in no case
8 more than ten, of the total Products purchased from each supplier of the Products. Following the
9 testing of the first two orders as described above, Defendant shall, for each subsequent order,
10 randomly select and test the greater of 0.05% (one-twentieth of one percent) or four, but in no
11 case more than five, of the total Products purchased in that calendar year from each supplier of
12 the Products.

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

20 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory
21 testing of the Products. Any such testing shall be conducted by CEH at an independent
22 laboratory, in accordance with both of the Test Protocols. In the event that CEH's testing
23 demonstrates that the Products contain Listed Phthalates in excess of trace amounts subsequent
24 to the Compliance Date, CEH shall inform Defendant of the test results, including information
25 sufficient to permit Defendant to identify the Product(s). Defendant shall, within 30 days
26 following such notice, provide CEH, at the address listed in Section 11.1, with the certification
27 and testing information demonstrating its compliance with Sections 2.2 and 2.3 of this Consent
28 Judgment. If Defendant fails to provide CEH with information demonstrating that it complied

1 with Sections 2.2 and/or 2.3, Defendant shall be liable for stipulated payments in lieu of penalties
2 for Products for which CEH produces tests demonstrating the presence of Listed Phthalates in
3 excess of trace amounts in the Products. The payments shall be made to CEH and used for the
4 purposes described in Section 3.1.

5 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments
6 in lieu of penalties are warranted under Section 2.4, the stipulated payment amount shall be as
7 follows for each unit of Product for which CEH produces a test result showing that Defendant
8 sold a Product containing Listed Phthalates in excess of trace amounts after the Compliance
9 Date:

10	First Occurrence:	\$500
11	Second Occurrence:	\$750
12	Third Occurrence:	\$1,000
13	Thereafter:	\$2,500

14 **3. SETTLEMENT PAYMENTS**

15 **3.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
16 \$10,000 in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall use
17 such funds to continue its work protecting people from exposures to toxic chemicals. As part of
18 this work, CEH intends to conduct periodic testing of the Products as set forth in Section 2.4.
19 The payment required under this section shall be made payable to CEH.

20 **3.2 Attorneys' Fees and Costs.** Defendant shall pay \$20,000 to reimburse
21 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
22 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,
23 litigating and negotiating a settlement in the public interest. The payment required under this
24 section shall be made payable to Lexington Law Group, LLP.

25 **3.3 Delivery of payments.** All payments made pursuant to this Section 3
26 shall be delivered to the Lexington Law Group, LLP at the address set forth in Section 11.1 and
27 shall be delivered within 10 days of entry of this Consent Judgment.
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4. MODIFICATION OF CONSENT JUDGMENT

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

5. ENFORCEMENT OF CONSENT JUDGMENT

5.1 CEH may, by motion or application for an order to show cause, enforce the terms and conditions contained in this Consent Judgment. Should CEH prevail on any such motion, it shall be entitled to recover its reasonable attorneys' fees and costs associated with enforcing the Consent Judgment.

6. APPLICATION OF CONSENT JUDGMENT

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

7. CLAIMS COVERED AND RELEASE OF CLAIMS

7.1 This Consent Judgment is a full, final and binding resolution between CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in the Complaint against Defendant (including any claims that could be asserted in connection with any of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, customers or retailers including but not limited to Sally Beauty Holdings, Inc. and Sally Beauty Supply, LLC (collectively, "Defendant Releasees") based on failure to warn about alleged exposures to DEHP resulting from any Products manufactured, distributed or sold by Defendant ("Covered Claims") on or prior to the date of entry of this Consent Judgment. CEH, its directors, officers, employees and attorneys hereby release all Covered Claims against Defendant Releasees. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 for purposes of DEHP exposures from the Products. Nothing in this Consent Judgment is intended to release or releases Defendant Releasees from any claims alleging exposures to DEHP resulting from the manufacture, distribution and/or sale of vinyl gloves other than those sold by Defendant.

1 **8. SEVERABILITY**

2 **8.1** In the event that any of the provisions of this Consent Judgment are held
3 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
4 affected.

5 **9. GOVERNING LAW**

6 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
7 State of California.

8 **10. RETENTION OF JURISDICTION**

9 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
10 the terms this Consent Judgment.

11 **11. PROVISION OF NOTICE**

12 **11.1** All notices required pursuant to this Consent Judgment and
13 correspondence shall be sent to the following:

14 For CEH:

15 Mark N. Todzo
16 Lexington Law Group, LLP
17 1627 Irving Street
18 San Francisco, CA 94122

19 For Defendant:

20 Daniel J. Herling
21 Leslie T. Krasny
22 Keller & Heckman LLP
23 3 Embarcadero Center, Ste. 450
24 San Francisco, CA 94101

25 **12. COURT APPROVAL**

26 **12.1** CEH will comply with the settlement notice provisions of Health and
27 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

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13. EXECUTION AND COUNTERPARTS

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

14. AUTHORIZATION

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

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro *Michael Green*
Assistant Director *Executive Director*

Dated: 5/14/09

**LITTLE RAPIDS CORPORATION
DBA GRAHAM PROFESSIONAL PRODUCTS**

Dated: _____

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Charlie Pizarro
Assistant Director

Dated: _____

**LITTLE RAPIDS CORPORATION
DBA GRAHAM PROFESSIONAL PRODUCTS**

Ronald R. Thiry

Dated: 5/13/09

Ronald R. Thiry
[Name]

VP, operations
[Title]

