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6 ACME UNITED CORPORATION.

ENDORSED
FILED
San Francisco County Superior Court

APR 07 2009

GORDON PARK-LI, Clerk

BY: _____
Deputy Clerk

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

11 CENTER FOR ENFIRONMENTAL HEALTH, a
12 non-profit corporation,

13 Plaintiff,

14 v.

15 ACME UNITED CORPORATION; ADENNA
16 INC.; BECTON, DICKINSON & COMPANY;
17 BETTY DAIN CREATIONS, INC.; DURASAFE
18 INC.; IMPACT PRODUCTS, LLC; INVACARE
19 CORPORATION; MICROFLEX
CORPORATION; SHELBY GROUP
INTERNATIONAL DBA MCR SAFETY;
UNITED STATIONERS SUPPLY CO.; and
Defendant DOES 1 through 200,
inclusive, Defendant.

Case No. CGC-08-482792

~~PROPOSED~~ CONSENT JUDGMENT
AS TO DEFENDANT ACME UNITED
CORPORATION

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1 **1. INRODUCTION**

2 **1.1** On December 9, 2008, plaintiff the Center for Environmental Health (“CEH”),
3 a non-profit corporation acting in the public interest, filed a complaint entitled *Center for*
4 *Environmental Health v. Acme United Corp., et al.*, San Francisco Superior Court Case No. CGC-08-
5 482792, (the “Complaint”), for civil penalties and injunctive relief pursuant to Cal. Health & Safety
6 Code § 25249.5, *et seq.* (“Proposition 65”) and naming Acme United Corporation as a defendant.

7 **1.2** Acme United Corporation (identified herein as “Acme”) is a corporation that
8 employs 10 or more persons and that manufactured, distributed and/or sold vinyl gloves (the
9 “Products”) in the State of California. CEH and Acme are referred to collectively herein as the
10 “Parties.”

11 **1.3** On or about August 26, 2008, CEH served Acme and the appropriate public
12 enforcement agencies with the requisite 60-day notice that Acme was in violation of Proposition 65.
13 CEH’s Notice and the Complaint in the CEH Action allege that Acme exposes people who use or
14 otherwise handle the Products to di(2-ethylhexyl) phthalate (“DEHP”), a chemical known to the State
15 of California to cause cancer, birth defects and other reproductive harm, without first providing clear
16 and reasonable warning to such persons regarding the carcinogenicity and reproductive toxicity of
17 DEHP. The Notice and Complaint allege that Defendant’s conduct violates Health & Safety Code
18 § 25249.6, the warning provision of Proposition 65. Defendant disputes such allegations and asserts
19 that all of its Products are safe and complies with all applicable laws.

20 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this
21 Court has jurisdiction over the subject matter of the violations alleged in the Complaint and personal
22 jurisdiction over Acme as to the acts alleged in the Complaint, that venue is proper in the County of
23 San Francisco, and that this Court has jurisdiction to enter this Consent Judgment as a full and final
24 resolution of all claims which were or could have been raised in the Complaint against Acme based
25 on the facts alleged therein.

26 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of certain
27 disputed claims between the Parties as alleged in the Complaint. By executing this Consent
28 Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties’ intent that

1 nothing in this Consent Judgment shall be construed as an admission by the Parties of any fact,
2 conclusion of law, issue of law or violation of law, nor shall compliance with the Consent Judgment
3 constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law,
4 or violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
5 remedy, argument or defense the Parties may have in this or any other or future legal proceedings.

6 **2. COMPLIANCE – REFORMULATION**

7 **2.1 Reformulation Standard.** After 30 days following the entry of this Consent
8 Judgment (the “Compliance Date”), Acme shall not manufacture, distribute, ship, or sell, or cause to
9 be manufactured, distributed or sold in California, any Product that contains in excess of trace
10 amounts of DEHP. For purposes of this Consent Judgment only, “in excess of trace amounts” is
11 more than 600 parts per million (“ppm”). In reformulating the Products to remove DEHP, Acme may
12 not use butyl benzyl phthalate (“BBP”), di-n-hexyl phthalate (“DnHP”), di-n-butyl phthalate (“DBP”) or
13 di-isodecyl phthalate (“DIDP”) in excess of trace amounts. DEHP, BBP, DnHP, DBP and DIDP
14 are together referred to herein as “Listed Phthalates.”

15 **2.1.1 Certification of Level From Suppliers.** Acme shall issue
16 specifications to its suppliers requiring that the Products shall not contain DEHP or any other Listed
17 Phthalate in excess of trace amounts. Acme shall obtain written certification from its suppliers of the
18 Products certifying that the Products do not contain DEHP in excess of trace amounts.

19 **2.1.2 Acme’s Testing.** In order to ensure compliance with the requirements
20 of Section 2.1, Acme shall cause to be conducted testing to confirm that Products sold in California
21 following the Compliance Date do not contain DEHP in excess of trace amounts. Testing shall be
22 conducted in compliance with Section 2.1. All testing pursuant to this section shall be performed by
23 an independent laboratory in accordance with both of the following test protocols: (1) EPA
24 SW8270C; and (2) EPA SW3580A (together referred to as the “Test Protocols”). At the request of
25 CEH, the results of the testing performed pursuant to this section shall be made available to CEH on a
26 confidential basis.

27 **2.1.2.1 Testing Frequency.** For each of the first two orders of
28 Products purchased from each of Acme’s suppliers after the Compliance Date, Acme shall randomly

1 select and test one glove from each of the greater of 0.1% (one-tenth of one percent) or eight, but in
2 no case more than ten, of the total boxes of Products purchased from each supplier of the Products
3 intended for sale in California. Following the testing of the first two orders as described above,
4 Acme shall, for each subsequent order, randomly select and test one glove from each of the greater of
5 0.05% (one-twentieth of one percent) or four, but in no case more than five, of the total boxes of
6 Products purchased in that calendar year for sale in California from each supplier of the Products.

7 **2.1.2.2 Products That Contain Listed Phthalates Pursuant to**
8 **Acme's Testing.** If the results of the testing required pursuant to Section 2.1.2 show Listed
9 Phthalates in excess of trace amounts in a Product, Acme shall: (1) refuse to accept all of the Products
10 that were purchased under the particular purchase order; (2) send a notice to the supplier explaining
11 that such Products do not comply with the suppliers' certification; and (3) apply the testing frequency
12 set forth in 2.1.2.1 as though the next shipment from the supplier were the first one following the
13 Compliance Date.

14 **2.1.3 CEH's Confirmatory Testing.** CEH intends to conduct confirmatory
15 testing of the Products. Any such testing shall be conducted by CEH at an independent laboratory, in
16 accordance with both of the Test Protocols. In the event that CEH's testing demonstrates that the
17 Products contain Listed Phthalates in excess of trace amounts subsequent to the Compliance Date,
18 CEH shall inform Acme of the test results, including information sufficient to permit Acme to
19 identify the Product(s). Acme shall, within 30 days following such notice, provide CEH, at the
20 address listed in Section 10.1, with the certification and testing information demonstrating its
21 compliance with Sections 2.1.1 and 2.1.2 of this Consent Judgment. If Acme fails to provide CEH
22 with information demonstrating that it complied with Sections 2.1.1 and/or 2.1.2, Acme shall be
23 liable for stipulated payments in lieu of penalties for Products for which CEH produces tests
24 demonstrating the presence of Listed Phthalates in the Products. The payments shall be made to CEH
25 and used for the purposes described in Section 4.1.

26 **2.1.4 Stipulated Penalties.** If stipulated payments in lieu of penalties are
27 warranted under Section 2.1.3, the stipulated payment amount shall be as follows for each
28 Occurrence of Acme selling a Product containing Listed Phthalates after the Compliance Date:

1 First Occurrence: \$500

2 Second Occurrence: \$750

3 Third Occurrence: \$1,000

4 Thereafter: \$2,500

5 CEH shall have the burden of demonstrating that stipulated penalties are warranted by proving
6 noncompliance with Sections 2.1.1 and 2.1.2 by a preponderance of the evidence. As used in this
7 Section 2.1.4, the sale of any number of Products from a single lot shall constitute an "Occurrence."

8 **3. SETTLEMENT PAYMENTS**

9 **3.1 Monetary Payment in Lieu of Penalty.** Acme shall pay to CEH \$7,500 in
10 lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall use such funds to
11 continue its work protecting people from exposures to toxic chemicals. As part of this work, CEH
12 intends to conduct periodic testing of the Products as set forth in Section 2.1.3. The payment
13 required under this section shall be made payable to CEH.

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

19 **3.3 Delivery of Payments.** All payments made pursuant to this Section 3 shall be
20 delivered to the Lexington Law Group, LLP at the address set forth in Section 10.1 and shall be
21 delivered within 10 days of entry of this Consent Judgment.

22 **4. MODIFICATION OF CONSENT JUDGMENT**

23 **4.1** This Consent Judgment may be modified by written agreement of CEH and
24 Acme, or upon motion of CEH or Acme as provided by law. Grounds for such modification include,
25 but are not limited to, any change in law that would (1) render Proposition 65 inapplicable to the
26 Products or to DEHP or (2) establish a compliance standard that would allow concentrations of
27 DEHP in the Products to exceed of 600 ppm without a Proposition 65 warning.

28 **4.2** CEH intends to enter into agreements with other entities that manufacture,

1 distribute and/or sell vinyl gloves containing DEHP. It is the intention of this Consent Judgment that
2 no such settlement shall place Acme at a competitive disadvantage with other such entities. Should
3 the provisions of a Consent Judgment with a similarly situated manufacturer or distributor of vinyl
4 gloves contain compliance standards that are less stringent than those contained in this Consent
5 Judgment, Acme may obtain a modification of this Consent Judgment to conform with the terms of
6 the later entered Consent Judgment.

7 **5. ENFORCEMENT OF CONSENT JUDGMENT**

8 **5.1** CEH may, by motion or application for an order to show cause before the
9 Superior Court of the County of San Francisco, enforce the terms and conditions contained in this
10 Consent Judgment. Should CEH prevail on any motion or application under this section, CEH shall
11 be entitled to its reasonable attorneys' fees and costs associated with such motion or application.

12 **6. APPLICATION OF CONSENT JUDGMENT**

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

15 **7. CLAIMS COVERED**

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

27 **8. SEVERABILITY**

28 **8.1** In the event that any of the provisions of this Consent Judgment are held by a

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

2 **9. GOVERNING LAW**

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

5 **10. PROVISION OF NOTICE**

6 **10.1** All notices required pursuant to this Consent Judgment and correspondence
7 shall be sent to the following:

8 For CEH Mark N. Todzo
9 Lexington Law Group, LLP
10 1627 Irving Street
San Francisco, CA 94122

11 For Acme: Walter Johnsen
12 Chief Executive Officer
13 Acme United Corporation
60 Round Hill Road
Fairfield, CT 06824

14 Robin S. Stafford
15 Morrison & Foerster
425 Market Street
16 San Francisco, CA 94105

17 **11. RETENTION OF JURISDICTION**

18 **11.1** This Court shall retain jurisdiction of this matter to implement and enforce the
19 terms this Consent Judgment.

20 **12. COURT APPROVAL**

21 **12.1** If this Consent Judgment is not approved by the Court, it shall be of no further
22 force or effect.

23 **13. EXECUTION AND COUNTERPARTS**

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

26 **14. AUTHORIZATION**

27 **14.1** Each signatory to this Consent Judgment certifies that he or she is fully
28 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into

1 and execute the Consent Judgment on behalf of the party represented and legally bind that party. The
2 undersigned have read, understand and agree to all of the terms and conditions of this Consent
3 Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.
4

5 **AGREED TO:**

6 CENTER FOR ENVIRONMENTAL HEALTH

Dated: 1/20/09

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~~Michael Green, Executive Director~~
Center for Environmental Health

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10 *CHARLIE PRIMO, Associate Director*

11 ACME UNITED CORPORATION

Dated: _____

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13 _____

14 _____
Print Name

15 _____
Title

1 and execute the Consent Judgment on behalf of the party represented and legally bind that party. The
2 undersigned have read, understand and agree to all of the terms and conditions of this Consent
3 Judgment. Except as explicitly provided herein, each party is to bear its own fees and costs.
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5 **AGREED TO:**

6 CENTER FOR ENVIRONMENTAL HEALTH Dated: _____
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8
9 Michael Green, Executive Director
Center for Environmental Health

10 ACME UNITED CORPORATION Dated: January 20, 2009
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12 Walter C. Johnson
13 Walter C. Johnson

14 Print Name
15 Chairman and CEO
16 Title

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Acme United Corporation, the settlement is approved and judgment is hereby entered according to the terms herein.

Dated: APR 07 2009

CHARLOTTE WALTER WOOLARD

Judge, Superior Court of the State of California