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10 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
San Francisco County Superior Court

APR 28 2009

GORDON PARK-LI, Clerk

BY: _____ Deputy Clerk

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF SAN FRANCISCO

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

15 Plaintiff,

16 v.

17 ACME UNITED CORPORATION, *et al.*,

18 Defendants.

Case No. CGC-08-482792

~~PROPOSED~~ CONSENT JUDGMENT RE:
ADENNA, INC.

19 **1. INTRODUCTION**

20 1.1 On December 9, 2008, plaintiff the Center for Environmental Health ("CEH"), a
21 non-profit corporation acting in the public interest, filed a complaint entitled *Center for*
22 *Environmental Health v. Acme United Corporation, et al.*, San Francisco County Superior Court
23 Case Number CGC-08-482792 (the "CEH Action"), for civil penalties and injunctive relief
24 pursuant to the provisions of Cal. Health & Safety Code § 25249.5, *et seq.* ("Proposition 65").

25 1.2 Defendant Adenna, Inc. ("Defendant") is a corporation that distributed and/or sold
26 vinyl gloves containing di(2-ethylhexyl) phthalate ("DEHP") ("Products") in the State of
27 California.
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1 1.3 On or about August 26, 2008 CEH served Defendant and public enforcement
2 agencies with a 60-day Notice (“Notice”) alleging that Defendant was in violation of Proposition
3 65. CEH’s Notice and the Complaint in the CEH Action allege that Defendant exposes people
4 who use or otherwise handle the Products to di(2-ethylhexyl) phthalate (“DEHP”), a chemical
5 known to the State of California to cause cancer, birth defects and other reproductive harm,
6 without first providing clear and reasonable warning to such persons regarding the
7 carcinogenicity and reproductive toxicity of DEHP. The Notice and Complaint allege that
8 Defendant’s conduct violates Health & Safety Code § 25249.6, the warning provision of
9 Proposition 65. Defendant disputes all such allegations.

10 1.4 On October 30, 2008, Defendant filed an action for Declaratory Relief against
11 CEH with regard to the Notice in the Los Angeles County Superior Court, entitled *Adenna v.*
12 *Center for Environmental Health*, Case Number BC401006 (the “Los Angeles County Action”).
13 The parties agree that the Los Angeles County Action will be resolved as part of the resolution of
14 the CEH Action by this Consent Judgment.

15 1.5 The Parties enter into this Consent Judgment as a settlement of the disputed claims
16 between the Parties as alleged in both Actions. By executing this Consent Judgment, the Parties
17 do not admit any facts or conclusions of law, nor shall it or any terms of it be construed as an
18 admission of any fact, conclusion of law, issue of law or violation of law, nor shall compliance
19 with it constitute or be construed as an admission of any fact, conclusion of law, issue of law, or
20 violation of law. Nothing in this Consent Judgment shall prejudice, waive or impair any right,
21 remedy, argument or defense the Parties may have in this or any other or future legal proceedings.

22 **2. COMPLIANCE**

23 2.1 Within 120 days following entry of the Consent Judgment by the Court (the
24 “Compliance Date”), Defendant shall not distribute and/or sell, or cause to be distributed and/or
25 sold, any Products unless such Products bear a label containing the following warning language:

26 **WARNING: This product contains a chemical known to the State of California to**
27 **cause cancer, birth defects or other reproductive harm.**

1 This Warning shall be prominently displayed on the package with such conspicuousness, as
2 compared with other words, statements, or designs as to render it likely to be read and understood
3 by an ordinary individual. The warning statement shall not be preceded, followed, or surrounded
4 by words, symbols or other matter that reduces its conspicuousness or that introduces, modifies,
5 qualifies or explains the required text, such as "legal notice required by law."

6 **3. SETTLEMENT PAYMENTS**

7 **3.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH \$6,000.00
8 in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall use such
9 funds to continue its work protecting consumers and the public from exposure to toxic chemicals.
10 The payment required under this section shall be made payable to CEH.

11 **3.2 Attorneys' Fees and Costs.** Defendant shall pay \$11,500.00 to reimburse CEH
12 and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other
13 costs incurred as a result of investigating, bringing this matter to Defendant's attention, litigating
14 and negotiating a settlement in the public interest. The payment required under this section shall
15 be made payable to the Lexington Law Group.

16 **3.3 Delivery of Payments.** All payments made pursuant to this Section 3 shall be
17 delivered to the Lexington Law Group at the address set forth in Section 11.1 and shall be
18 delivered as follows: (1) the first payment of \$6,000, payable to CEH, shall be delivered within
19 30 days of mutual execution of this Consent Judgment; (2) the second payment of \$6,000,
20 payable to the Lexington Law Group, shall be delivered within 60 days of mutual execution of the
21 Consent Judgment; and (3) the final payment of \$5,500, payable to the Lexington Law Group,
22 shall be delivered within 90 days of mutual execution of this Consent Judgment.

23 **4. MODIFICATION OF CONSENT JUDGMENT**

24 **4.1** This Consent Judgment may be modified by written agreement of CEH and
25 Defendant, or upon motion of CEH or Defendant as provided by law.

26 **5. ENFORCEMENT OF CONSENT JUDGMENT**

27 **5.1** The Parties may enforce this Consent Judgment by motion or application for an
28

1 order to show cause. The prevailing party shall be entitled to recover its reasonable attorneys'
2 fees and costs associated with enforcing this Consent Judgment.

3 **6. APPLICATION OF CONSENT JUDGMENT**

4 **6.1** This Consent Judgment shall apply to and be binding upon the parties hereto, their
5 divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

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

7 **7.1** This Consent Judgment is a full, final and binding resolution between CEH and
8 Defendant of any claimed violation of Proposition 65 that was or could have been asserted in
9 either Action (including any claims that could be asserted in connection with any of the Products
10 covered by this Consent Judgment) against the Parties or their parents, subsidiaries, affiliates,
11 directors, officers, employees, agents, attorneys, distributors, customers or retailers based on
12 failure to warn of alleged exposures to DEHP resulting from any Products distributed or sold by
13 Defendant on or prior to the date of entry of this Consent Judgment, as well as the claims in the
14 Los Angeles Action or any claims arising out of either Action ("Covered Claims"). The Parties
15 and their directors, officers, employees and attorneys hereby release all Covered Claims against
16 one another and each of their directors, officers, employees and attorneys. Compliance with the
17 terms of this Consent Judgment constitutes compliance with Proposition 65 for purposes of
18 DEHP exposures to the Products. Entry of this Consent Judgment will have preclusive (res
19 judicata and/or collateral estoppel) effect with regard to the Covered Claims. Except as explicitly
20 provided herein, each party will bear its own fees and costs.

21 **7.2** Within 5 days following entry of the execution of this Consent Judgment by the
22 Parties, Defendant shall dismiss the Los Angeles County Action with prejudice.

23 **8. SEVERABILITY**

24 **8.1** If any of the provisions of this Consent Judgment are held by a court to be
25 unenforceable, the validity of the enforceable provisions shall not be adversely affected.

26 **9. GOVERNING LAW**

27 **9.1** This Consent Judgment shall be governed by the laws of the State of California.
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1 **10. RETENTION OF JURISDICTION**

2 **10.1** This Court will retain jurisdiction to enforce this Consent Judgment.

3 **11. PROVISION OF NOTICE**

4 **11.1** All notices required pursuant to this Consent Judgment and correspondence shall
5 be sent to the following:

6 For CEH:

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

For Defendant:

Douglas A. Frymer
4981 Irwindale Avenue
Suite 100
Irwindale, CA 91706

10 **12. COURT APPROVAL**

11 **12.1** CEH will comply with the settlement notice provisions of Health and Safety Code
12 § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

13 **13. EXECUTION AND COUNTERPARTS**

14 **13.1** This Consent Judgment may be executed in counterparts and by means of
15 facsimile, which taken together shall be deemed to constitute one document.

16 **14. AUTHORIZATION**

17 **14.1** Each signatory to this Consent Judgment certifies that he or she is fully authorized
18 by the party he or she represents to enter into and execute it on behalf of the party represented and
19 legally bind that party. The undersigned have read, understand and agree to all of the terms and
20 conditions of this Consent Judgment.

21 **CENTER FOR ENVIRONMENTAL HEALTH**

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23 Michael Green, Executive Director
Center for Environmental Health

Dated: 3/9/09

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25 **ADENNA, INC.**

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27 Maxwell Lee, President

Dated:

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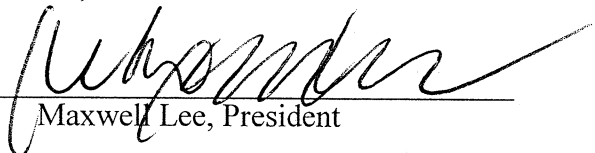
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CENTER FOR ENVIRONMENTAL HEALTH

Michael Green, Executive Director
Center for Environmental Health

Dated:

ADENNA, INC.


Maxwell Lee, President

Dated: March 9, 2009

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Adenna, Inc., the settlement is approved and the clerk is directed to enter Judgment in accordance with the terms herein.

Dated: APR 28 2009, 2009

CHARLOTTE WALTER WOOLARD
Judge of the Superior Court