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6 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
San Francisco County Superior Court

JUN 24 2009

GORDON PARK-LI, Clerk

BY: _____
Deputy Clerk

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

21
22 Defendants.

Case No. CGC-08-482792

~~PROPOSED~~ CONSENT JUDGMENT
RE: IMPACT PRODUCTS, LLC

1 **1. INTRODUCTION**

2 **1.1** On December 9, 2008, plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint titled *Center for*
4 *Environmental Health v. Acme United Corporation., et al.*, San Francisco County Superior Court
5 Case Number CGC-08-482792 (the “Action”), for civil penalties and injunctive relief pursuant to
6 the provisions of Cal. Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”). Impact
7 Products LLC (“Defendant”) is named as a defendant in the Action.

8 **1.2** Defendant is a corporation that employs 10 or more persons and
9 manufactured, distributed and/or sold vinyl gloves in the State of California. (As used in this
10 Consent Judgment, “Products” refers to vinyl gloves manufactured, distributed and/or sold by
11 Defendant in the State of California.)

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

22 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this
23 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and
24 personal jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue is

1 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent
2 Judgment as a full and final resolution of all claims which were or could have been raised in the
3 Complaint based on the facts alleged therein.

4 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
5 certain disputed claims between the Parties as alleged in the Complaint. By executing this
6 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'
7 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
8 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
9 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
10 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
11 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
12 any other or future legal proceedings.
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15 **2. COMPLIANCE - REFORMULATION**

16 **2.1 Reformulation Standard - Removal of DEHP.** Beginning 60 days after
17 entry of this Consent Judgment (the "Compliance Date"), Defendant shall not manufacture for
18 sale or distribution in California, distribute, ship, or sell in the State of California, or knowingly
19 cause to be manufactured for sale or distribution in California or cause to be distributed or sold in
20 California, any Product that contains in excess of trace amounts of DEHP. For purposes of this
21 Consent Judgment only, "in excess of trace amounts" is more than 600 parts per million ("ppm").
22 In reformulating the Products to remove DEHP, Defendant may not use butyl benzyl phthalate
23 ("BBP"), di-n-hexyl phthalate ("DnHP"), di-n-butyl phthalate ("DBP") or di-isodecyl phthalate
24 ("DIDP") in excess of trace amounts. DEHP, BBP, DnHP, DBP and DIDP are together referred
25 to herein as "Listed Phthalates."
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27 **2.1.1 Certification from Suppliers.** Defendant shall issue specifications
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1 to its suppliers of product for sale in California (“hereafter “suppliers”) requiring that the
2 Products shall not contain DEHP or any other Listed Phthalate in excess of trace amounts.
3 Defendant shall obtain written certification from its suppliers of the Products certifying that the
4 Products do not contain DEHP.

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6 **2.1.2 Defendant’s Testing.** In order to ensure compliance with the
7 requirements of Section 2.1, Defendant shall require its suppliers to provide Defendant with
8 certification of testing confirming that the Products do not contain Listed Phthalates in excess of
9 trace amounts. Testing shall be conducted in compliance with Section 2.1.2.1. All testing
10 pursuant to this Section shall be performed by an independent laboratory in accordance with one
11 of the following test protocols: (1) EPA SW8270C and EPA SW3580A, (2) ASTM D3421-75, or
12 (3) an equivalent protocol (referred to as the “Test Protocols”). At the request of CEH, the results
13 of the testing performed pursuant to this section shall be made available to CEH within a
14 reasonable time on a confidential basis.

15
16 **2.1.2.1 Testing Frequency – Current Supplier.** For the
17 first, second, tenth, twentieth, thirtieth, fiftieth and seventieth orders of Products purchased from
18 Defendant’s current supplier for sale in California after the Compliance Date (assuming that these
19 numbers of orders are placed and received between the Compliance Date and April 15, 2013),
20 Defendant shall require such supplier to randomly select and test three gloves from each order.
21 As used in this Consent Judgment, the “Current Supplier” is a supplier who provided Products to
22 Defendant for sale in California before the Compliance Date.

23
24 **2.1.2.2 Testing of Products from Additional Suppliers.** If
25 Defendant purchases Products from one or more Additional Suppliers for sale in California, then
26 in addition to the certification required of such suppliers pursuant to section 2.1.2, Defendant
27 shall require such Additional Suppliers to randomly select and test three gloves from the first and
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1 fifth orders. As used in this Consent Judgment, “Additional Suppliers” are those who provide
2 Products to Defendant for sale in California on or after, but not before the Compliance Date. This
3 requirement will remain in effect for any Additional Suppliers from whom Defendant purchases
4 Products from the Compliance Date, through April 15, 2013. Defendant shall have no further
5 obligation to either test Products or require testing by its suppliers after April 15, 2013.
6

7 **2.1.2.3 Traceability of Products.** Beginning with the
8 twenty-fifth order received after the Compliance Date (or earlier, should Defendant so choose),
9 Defendant shall require its suppliers to incorporate a means of product traceability into its
10 packaging or labeling. As used in this Consent Judgment, “product traceability” means a printed
11 code on the packaging or other means that allows Defendant to determine the supplier of a
12 Product from examining the packaging or labeling. Beginning with the first order from any
13 Additional Supplier, Defendant shall require its Additional Suppliers to incorporate a means of
14 product traceability into its packaging or labeling. Defendant shall notify CEH of the element of
15 such coding that indicates the Products were shipped after the Compliance Date.
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17 **2.1.2.4 Inadequate Certification or Failed Tests.**
18 Defendant shall reject any shipments that are not accompanied by certifications and testing in
19 compliance with Section 2.1.2, and shall notify CEH of any tests that fail to establish the absence
20 of Listed Phthalates in excess of trace amounts. Defendant shall continue to require its current
21 supplier to provide test reports until that supplier has provided the seven test reports as required
22 by section 2.1.2.1. If Defendant rejects any shipments because a required test report fails to
23 establish the absence of Listed Phthalates in excess of trace amounts, it shall then require that
24 such supplier begin the testing process anew.
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26 **2.1.3 Confirmatory Testing by CEH.** CEH intends to conduct
27 confirmatory testing of the Products at its own expense. For any testing conducted by
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1 Defendant's suppliers pursuant to this Consent Judgment, Defendant shall provide CEH with the
2 same number of gloves tested by the supplier, from the same lot tested, which CEH may then use
3 for its own testing. In addition, CEH may test Products obtained from other sources. However,
4 so long as Defendant complies with the requirements of Section 2.1.2.3 of this Consent Judgment
5 concerning product traceability, CEH shall not base a claim of non-compliance on any tests of
6 Products other than Products provided to it by the Defendant or Products CEH acquires from
7 other sources and which bear package coding indicating they were manufactured after the
8 Compliance Date. Any testing by CEH shall be conducted at an independent laboratory, in
9 accordance with the Test Protocols. In the event that such testing demonstrates that the Products
10 contain Listed Phthalates in excess of trace amounts, CEH shall provide Defendant with the test
11 results, including information sufficient to permit Defendant to identify the Product(s). CEH
12 shall also provide Defendant with packaging from such allegedly non-compliant Product(s), and a
13 sample of remaining, untested Product from the same package as the allegedly non-compliant
14 Product(s). Defendant shall, within 30 days following receipt of such notice and the remaining
15 Product(s) and packaging, provide CEH with an explanation regarding the presence of Listed
16 Phthalates in the Products or such other evidence as Defendant believes establishes that the
17 allegedly non-compliant product(s) were in compliance with this Consent Judgment. Unless
18 Defendant provides CEH with information sufficient to demonstrate that CEH's test result was
19 incorrect, Defendant shall be liable for stipulated payments in lieu of penalties for Products for
20 which CEH produces tests demonstrating the presence of Listed Phthalates in the Products. The
21 payments shall be made to CEH and used for the purposes described in Section 3.1.

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25 **2.1.3.1 Stipulated Payments In Lieu of Penalties.** If

26 stipulated payments in lieu of penalties are warranted under section 2.1.3, the stipulated payment
27 amount shall be as follows for each Occurrence of Defendant selling a Product in California
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1 containing Listed Phthalates after the Compliance Date:

2 First Occurrence: \$500
3 Second Occurrence: \$750
4 Third Occurrence: \$1,000
5 Thereafter: \$2,500
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7 CEH shall have the burden of proving noncompliance by a preponderance of the evidence.

8 As used in this section 2.4.1, an "Occurrence" is the sale in California of any number of
9 Products from the same lot or manufacturing run containing Listed Phthalates.

10 **3. SETTLEMENT PAYMENTS**

11 **3.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
12 \$16,000 in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall use
13 such funds to continue its work protecting people from exposures to toxic chemicals. As part of
14 this work, CEH intends to conduct periodic testing of the Products as set forth in Section 2.1.3.
15 The payment required under this section shall be made payable to CEH.
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17 **3.2 Attorneys' Fees and Costs.** Defendant shall pay \$34,000 to reimburse
18 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
19 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,
20 litigating and negotiating a settlement in the public interest. The payment required under this
21 section shall be made payable to Lexington Law Group, LLP.
22

23 **3.3 Delivery of Payments.** The payments required under this Section 3 shall
24 be delivered to the Lexington Law Group, LLP at the address set forth in Section 11.1 within 10
25 days of entry of this Consent Judgment.

26 **4. MODIFICATION OF CONSENT JUDGMENT**

27 **4.1** This Consent Judgment may be modified by written agreement of CEH and
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1 Defendant, or upon motion of CEH or Defendant as provided by law.

2 **4.1.1 Change in Law.** It is the intention of this Consent Judgment that
3 Defendant's present and future obligations concerning distribution of Products containing Listed
4 Phthalates should not remain in effect if Proposition 65 is determined by a court, legislature or
5 other appropriate regulatory authority to no longer apply to the Products and/or Listed Phthalates.

6 **4.1.1.1** Should a final and non-appealable published
7 decision of any State or Federal Appellate Court rule that State or Federal legislation has
8 effectively repealed or preempted Proposition 65 in its entirety, or should legislation or regulatory
9 action occur which removes DEHP from the lists of chemicals established pursuant to Cal. Health
10 & Safety Code §25249.8, then Defendant will have good cause to modify the Agreement such
11 that Defendant shall have no further obligations under this Consent Judgment.

12 **4.1.1.2** Should the obligations with respect to Listed
13 Phthalates imposed by an agreement with CEH on a manufacturer or distributor of Products that
14 is similarly situated with Defendant be made less stringent as a result of the amendment, repeal or
15 preemption of Proposition 65 or any other statute, or of the lists of chemicals established pursuant
16 to Cal. Health & Safety Code §25249.8, then such amendment, repeal or preemption will
17 constitute good cause for modification of this Consent Judgment.

18 **4.1.2 Less Stringent Settlement Provisions Involving Other**
19 **Companies.** CEH intends to enter into agreements with other entities that manufacture, distribute
20 and/or sell Products. It is the intention of this Consent Judgment that no such settlement shall
21 place Defendant at a competitive disadvantage with other such entities. Should the provisions of
22 a consent judgment with a similarly situated manufacturer or distributor of Products be less
23 stringent than those contained in this Consent Judgment, Defendant may obtain a modification of
24 this Consent Judgment to conform with the terms of the later entered consent judgment.
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1 4.1.3 Before seeking modification of this Consent Judgment by the
2 Court, either party shall provide the other with 30 days written notice of its intention to seek
3 modification, together with the basis for such modification. The parties agree to informally meet
4 and confer concerning such requests prior to seeking modification by the Court.
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6 **5. ENFORCEMENT OF CONSENT JUDGMENT**

7 5.1 CEH may, by motion or application for an order to show cause, enforce the
8 terms and conditions contained in this Consent Judgment. Should CEH prevail on any such
9 motion, it shall be entitled to recover its reasonable attorneys' fees and costs associated with
10 enforcing the Consent Judgment.

11 **6. APPLICATION OF CONSENT JUDGMENT**

12 6.1 This Consent Judgment shall apply to and be binding upon the Parties
13 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
14 them.
15

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

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

2 **8. SEVERABILITY**

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

8 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
9 State of California.

10 **10. RETENTION OF JURISDICTION**

11 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
12 the terms this Consent Judgment.

13 **11. PROVISION OF NOTICE**

14 **11.1** All notices required pursuant to this Consent Judgment and correspondence
15 shall be sent to the following:
16

17 For CEH:

18 Mark N. Todzo
19 Lexington Law Group, LLP
20 1627 Irving Street
San Francisco, CA 94122

21 For Defendant:

22 Bruce Nye
23 Adams | Nye | Trapani | Becht LLP
24 222 Kearny Street, 7th Floor
San Francisco, CA 94108-4521

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

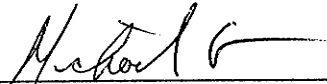
13.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

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, Assistant Director~~
Center for Environmental Health

MICHAEL GRON
EXECUTIVE DIRECTOR

Dated: 4/27/09

IMPACT PRODUCTS, LLC

Dated: _____

[Name]

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Charlie Pizarro, Assistant Director
Center for Environmental Health

Dated: _____

IMPACT PRODUCTS, LLC

T. Neal

Dated: 4-29-09

TERRY NEAL
[Name]

PRESIDENT & CEO
[Title]

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ORDER AND JUDGMENT

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

JUN 24 2009

Dated: _____

CHARLOTTE WALTER WOOLARD

Judge, Superior Court of the State of California