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6 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
San Francisco County Superior Court

NOV 03 2009

GORDON PARK-LI, Clerk

BY: _____ Deputy Clerk

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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
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12 CENTER FOR ENVIRONMENTAL HEALTH,)
13)
Plaintiff,)

Case No. CGC-08-482792

14 v.)

~~[PROPOSED]~~ CONSENT JUDGMENT
AS TO DEFENDANT MICROFLEX
CORPORATION

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

21)
22 Defendants.)
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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 entitled *Center*
4 *for Environmental Health v. Acme United Corporation, et al.*; San Francisco County Superior
5 Court Case Number CGC-08-482792 (the “CEH Action”), for civil penalties and injunctive relief
6 pursuant to the provisions of Cal. Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”).
7 The Complaint in the CEH Action named Microflex Corporation (“Defendant”) as a defendant.

8 **1.2** Defendant is a corporation that employs 10 or more persons and
9 manufactured, distributed and/or sold vinyl gloves (the “Products”) in the State of California.

10 **1.3** On or about August 26, 2008, CEH served Defendant and the appropriate
11 public enforcement agencies with the requisite 60-day Notice (the “Notice”) alleging that
12 Defendant was in violation of Proposition 65. CEH’s Notice and the Complaint in the CEH
13 Action allege that Defendant exposes people who use or otherwise handle the Products to di(2-
14 ethylhexyl) phthalate (“DEHP”), a chemical known to the State of California to cause cancer,
15 birth defects and other reproductive harm, without first providing clear and reasonable warning
16 to such persons regarding the carcinogenicity and reproductive toxicity of DEHP. The Notice
17 and Complaint allege that Defendant’s conduct violates Health & Safety Code § 25249.6, the
18 warning provision of Proposition 65. Defendant disputes such allegations and asserts that all of
19 its products are safe and comply 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
22 personal jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper
23 in the County of San Francisco, and that this Court has jurisdiction to enter this Consent
24 Judgment as a full and final resolution of all claims which were or could have been raised in the
25 Complaint against Defendant based on the facts alleged therein.

26 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
27 certain disputed claims between the Parties as alleged in the Complaint. By executing this
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1 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'
2 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
3 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
4 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
5 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
6 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
7 any other or future legal proceedings.

8 2. COMPLIANCE

9 2.1 WARNINGS. After 90-days following the entry of this Consent
10 Judgment (the "Compliance Date"), Defendant shall not distribute, ship, or sell, or cause to be
11 distributed, shipped or sold, any Product that contain any Listed Phthalate in excess of trace
12 amounts unless such Product bears a label containing the warning language set forth herein. For
13 purposes of this Consent Judgment: (1) "Listed Phthalates" means DEHP, butyl benzyl phthalate
14 ("BBP"), di-n-hexyl phthalate ("DnHP"), di-n-butyl phthalate ("DBP") and di-isodecyl phthalate
15 ("DIDP"); and (2) "in excess of trace amounts" means more than 600 parts per million.

16 **"WARNING: These vinyl gloves contain a chemical known to the State of**
17 **California to cause cancer, birth defects and other**
18 **reproductive harm."**

19 The warning statement shall be prominently displayed in at least 14 point font on the front of the
20 outside of the packaging, and shall be displayed in a separate outlined box set apart from any
21 other print and that contains no other language. The warning must be displayed with such
22 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
23 read and understood by an ordinary individual. The warning statement shall not be preceded,
24 followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or
25 that introduces, modifies, qualifies, or explains the required text, such as "legal notice required
26 by law." Defendant shall not provide the warning described in this paragraph for Products that
27 do not contain Listed Phthalates in excess of trace amounts. Defendant shall maintain
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1 documentation demonstrating its compliance with this Section 2.1, which shall be made available
2 to CEH upon request.

3 **3. SETTLEMENT PAYMENTS**

4 **3.1 Penalty.** Defendant shall pay \$1,000 as a civil penalty pursuant to Health
5 and Safety Code §25249.7(b). The penalty shall be made payable to CEH, which will apportion
6 the penalty in accordance with Health and Safety Code §25249.12.

7 **3.2 Payment in lieu of additional penalty.** Defendant shall pay to CEH
8 \$9,500 in lieu of any additional penalty pursuant to Health and Safety Code § 25249.7(b). CEH
9 shall use such funds to continue its work protecting people from exposures to toxic chemicals.
10 The payment required under this section shall be made payable to CEH.

11 **3.3 Attorneys' Fees and Costs.** Defendant shall pay \$19,500 to reimburse
12 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
13 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,
14 litigating and negotiating a settlement in the public interest. The payment required under this
15 section shall be made payable to Lexington Law Group.

16 **3.4 Delivery of Payments.** All payments made pursuant to this Section 4
17 shall be delivered to the Lexington Law Group at the address set forth in Section 11.1 and shall
18 be delivered within 10 days of entry of this Consent Judgment.

19 **4. MODIFICATION OF CONSENT JUDGMENT**

20 **4.1** This Consent Judgment may be modified by written agreement of CEH
21 and Defendant, or upon motion of CEH or Defendant as provided by law.

22 **5. ENFORCEMENT OF CONSENT JUDGMENT**

23 **5.1** CEH may, by motion or application for an order to show cause before the
24 Superior Court of the County of San Francisco, enforce the terms and conditions contained in
25 this Consent Judgment. Should CEH prevail on any motion or application under this section,
26 CEH shall be entitled to its reasonable attorneys' fees and costs associated with such motion or
27 application.

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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

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 (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 exposures to Listed Phthalates from the Products.

8. SEVERABILITY

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

9. GOVERNING LAW

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

10. PROVISION OF NOTICE

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

1 For CEH:

2 Mark N. Todzo
3 Lexington Law Group
4 1627 Irving Street
5 San Francisco, CA 94122

6 For Defendant:

7 Walter J. Lipsman
8 Morris Polich & Purdy LLP
9 1055 West 7th Street, 24th Floor
10 Los Angeles, CA 90017

11 And

12 Steven Olechny, Esq.
13 Vice President and General Counsel
14 Microflex Corp.
15 2301 Robb Drive
16 Reno, NV 89523-1901

17 **11. RETENTION OF JURISDICTION**

18 **11.1** This Court shall retain jurisdiction of this matter to implement and enforce
19 the 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
22 further force or effect.

23 **13. EXECUTION AND COUNTERPARTS**

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

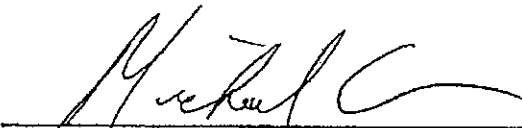
26 **14. AUTHORIZATION**

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 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

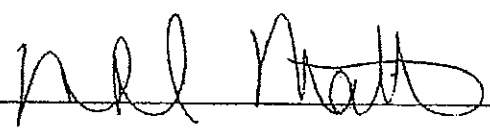
1 costs.

2 **AGREED TO:**

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4 CENTER FOR ENVIRONMENTAL HEALTH

5  Dated: 9/4/09
6 _____
7 Michael Green, Executive Director
8 Center for Environmental Health

9 MICROFLEX CORPORATION

10
11  Dated: 9/3/09
12 _____
13 Michael Mattos
14 Printed Name
15 President & CEO
16 Title

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ORDER AND JUDGMENT

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

Dated: NOV 03 2009

CHARLOTTE WALTER WOOLARD
Judge, Superior Court of the State of California