

1 LEXINGTON LAW GROUP
Eric S. Somers, State Bar No. 139050
2 Mark N. Todzo, State Bar No. 168389
Howard Hirsch, State Bar No. 213209
3 1627 Irving Street
San Francisco, CA 94122
4 Telephone: (415) 759-4111
Facsimile: (415) 759-4112

5 Attorneys for Plaintiff
6 CENTER FOR ENVIRONMENTAL HEALTH

FILED

JUL 14 2010

KIM TURNER, Court Executive Officer
MARIN COUNTY SUPERIOR COURT
By: K. Main, Deputy

7
8
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA

10 COUNTY OF MARIN

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

13 Plaintiff,

14 v.

15 LACROSSE FOOTWEAR, INC.; and
16 Defendant DOES 1 through 200, inclusive,

17 Defendants.

Case No. CIV 10-00641

Kim
[PROPOSED] CONSENT JUDGMENT
RE: LACROSSE FOOTWEAR, INC.

1 **1. INTRODUCTION**

2 **1.1** On February 5, 2010, 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. LaCrosse Footwear, Inc., et al.*, Marin County Superior Court Case
5 Number CIV 10-00641 (the “CEH Action”), for civil penalties and injunctive relief pursuant to
6 the provisions of Cal. Health & Safety Code §25249.5, *et seq.* (“Proposition 65”), naming
7 Defendant LaCrosse Footwear, Inc. (“Defendant”) as a defendant.

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

11 **1.3** On or about February 9, 2009, CEH served Defendant and the appropriate
12 public enforcement agencies with the requisite 60-day Notice (the “Notice”) alleging that
13 Defendant is in violation of Proposition 65. CEH’s Notice and the Complaint in the CEH
14 Action allege that Defendant exposes people who use or otherwise handle the Products to di(2-
15 ethylhexyl) phthalate (“DEHP”), a chemical known to the State of California to cause cancer
16 and birth defects or other reproductive harm, without first providing clear and reasonable
17 warning to such persons regarding the carcinogenicity and/or reproductive toxicity of DEHP.
18 The Notice and Complaint allege that Defendant’s conduct violates Health & Safety Code
19 §25249.6, the warning provision of Proposition 65. Defendant disputes such allegations and
20 asserts that all of its Products are safe and comply with all applicable laws.

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

27 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
28 certain disputed claims between the Parties as alleged in the Complaint. By executing this

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
7 or any other or future legal proceedings.

8 **2. COMPLIANCE – REFORMULATION**

9 **2.1 Reformulation – Transition From PVC.** Defendant has stated that it
10 intends at some point in the future to stop purchasing and selling rainwear made of or containing
11 polyvinyl chloride (“PVC”) and to instead use more environmentally friendly materials such as
12 ethylene vinyl acetate (“EVA”). Defendant’s transition away from the use of PVC is not
13 binding under this Consent Judgment, and Defendant intends to sell through its existing
14 inventory of PVC containing rainwear subject to the reformulation and testing requirements of
15 this Consent Judgment. Accordingly, the following reformulation and testing requirements
16 apply only to the extent that Defendant continues to sell the Products in the future.

17 **2.2 Reformulation Standard – Removal of DEHP.** On or before June 1,
18 2010 (the “Initial Compliance Date”), Defendant shall not manufacture or purchase, or cause to
19 be manufactured or purchased, any Product that contains in excess of trace amounts of DEHP.
20 On or before September 1, 2010 (the “Final Compliance Date”), Defendant shall not distribute,
21 ship, or sell, or cause to be distributed, shipped, or sold, any Product that contains in excess of
22 trace amounts of DEHP. For purposes of this Consent Judgment only, “in excess of trace
23 amounts” is more than 600 parts per million (“ppm”). In reformulating the Products to remove
24 DEHP, Defendant may not use butyl benzyl phthalate (“BBP”), di-n-hexyl phthalate (“DnHP”),
25 di-n-butyl phthalate (“DBP”) or di-isodecyl phthalate (“DIDP”) in excess of trace amounts.
26 DEHP, BBP, DnHP, DBP and DIDP are together referred to herein as “Listed Phthalates.”

27 **2.3 Certification From Suppliers.** Defendant shall issue specifications to its
28 suppliers of the Products requiring that the Products contain no more than trace amounts of

1 DEHP or any other Listed Phthalate. Defendant shall obtain written certification from each of
2 its suppliers of the Products certifying that after reasonable inquiry and to the best of their
3 knowledge the Products do not contain any Listed Phthalate in excess of trace amounts.

4 **2.4 Defendant's Testing.** In order to ensure compliance with the
5 requirements of Section 2.2, Defendant shall cause to be conducted testing to confirm that the
6 Products do not contain any Listed Phthalate in excess of trace amounts. Testing shall be
7 conducted in compliance with Section 2.2. All testing pursuant to this Section shall be
8 performed by an independent laboratory in accordance with both of the following test protocols:
9 (1) EPA SW8270C or EPA SW8270D; and (2) EPA SW3580A (together referred to as the "Test
10 Protocols"). At the request of CEH, the results of the testing performed pursuant to this Section
11 shall be made available to CEH.

12 **2.4.1 Testing Frequency.** Defendant shall test one randomly selected
13 sample of each of the Products that it sells in each calendar year up to a maximum of eleven
14 samples in a calendar year. Testing under Section 2.4 shall be performed for a minimum of
15 three years and until such time as Defendant has accumulated three consecutive years of test
16 results that consistently meet the reformulation requirements of Section 2.2 without a single test
17 result demonstrating that any Product contains Listed Phthalates in excess of trace amounts.
18 When Defendant has stopped the testing required pursuant to this Section 2.4.1, Defendant shall
19 notify CEH in writing at the address listed in Section 11.

20 **2.4.2 Products That Contain Listed Phthalates Pursuant to**
21 **Defendant's Testing.** If the results of the testing required pursuant to Section 2.4 show Listed
22 Phthalates in excess of trace amounts in a Product, Defendant shall: (1) refuse to accept all of
23 the Products that were purchased under the particular purchase order; and (2) send a notice to
24 the supplier explaining that such Products do not comply with Defendant's specifications for
25 Listed Phthalates.

26 **2.5 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory
27 testing of the Products. Any such testing shall be conducted by CEH at an independent
28 laboratory in accordance with the Test Protocols. In the event that CEH's testing demonstrates

1 that any Product contains Listed Phthalates in excess of trace amounts subsequent to the Final
2 Compliance Date, CEH shall inform Defendant of the test results, including information
3 sufficient to permit Defendant to identify the Product(s). Defendant shall, within 30 days
4 following such notice, provide CEH at the address listed in Section 11 with the supplier
5 certification and testing information demonstrating Defendant's compliance with Sections 2.2
6 and 2.3 of this Consent Judgment. If Defendant fails to provide CEH with information
7 demonstrating that it complied with Sections 2.2 and/or 2.3, Defendant shall be liable for
8 stipulated payments in lieu of penalties for any Product which CEH produces a test result
9 demonstrating the presence of Listed Phthalates in excess of trace amounts in the Products. The
10 payments shall be made payable to CEH and used for the purposes described in Section 3.2.2,
11 below.

12 **2.5.1 Stipulated Payments In Lieu of Penalties.** If stipulated
13 payments in lieu of penalties are warranted under Section 2.5, the stipulated payment amount
14 shall be as follows for each unit of Product for which CEH produces a test result proving that
15 Defendant sold a Product containing Listed Phthalates in excess of trace amounts after the Final
16 Compliance Date:

17	First Occurrence:	\$5,000
18	Second Occurrence:	\$7,500
19	Third Occurrence:	\$10,000
20	Thereafter:	\$20,000

21 **3. SETTLEMENT PAYMENTS**

22 **3.1 Payments From Defendant.** Within five (5) days of entry of this
23 Consent Judgment, Defendant shall pay the total sum of \$80,000 as a settlement payment.

24 **3.2 Allocation of Payments.** The total settlement amount for Defendant
25 shall be paid in three separate checks delivered to the offices of the Lexington Law Group (Attn:
26 Eric Somers), 1627 Irving Street, San Francisco, California 94122, and made payable and
27 allocated as follows:

28 **3.2.1 Civil Penalty.** Defendant shall pay \$1,000 as a civil penalty

1 pursuant to Health and Safety Code §25249.7(b), such money to be apportioned by CEH in
2 accordance with Health & Safety Code §25249.12. The penalty check shall be made payable to
3 the Center For Environmental Health.

4 **3.2.2 Monetary Payment in Lieu of Penalty.** Defendant shall pay to
5 CEH \$26,200 in lieu of any penalty pursuant to Health and Safety Code §25249.7(b). CEH
6 shall use such funds to continue its work protecting people from exposures to toxic chemicals.
7 As part of this work, CEH intends to conduct periodic testing of the Products as set forth in
8 Section 2.5. In addition, as part of its Community Environmental Action and Justice Fund, CEH
9 will use four percent of such funds to award grants to grassroots environmental justice groups
10 working to educate and protect people from exposures to toxic chemicals. The method of
11 selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The
12 payment required under this Section shall be made payable to the Center For Environmental
13 Health.

14 **3.2.3 Attorneys' Fees and Costs.** Defendant shall pay \$52,800 to
15 reimburse CEH and its attorneys for their reasonable investigation fees and costs, attorneys'
16 fees, and any other costs incurred as a result of investigating, bringing this matter to Defendant's
17 attention, litigating and negotiating a settlement in the public interest. The payment required
18 under this section shall be made payable to Lexington Law Group.

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 Enforcement Procedures.** Prior to bringing any motion or order to show
24 cause to enforce the terms of this Consent Judgment, a Party seeking to enforce shall provide the
25 violating party thirty (30) days advanced written notice of the alleged violation. The Parties
26 shall meet and confer during such thirty (30) day period in an effort to try to reach agreement on
27 an appropriate cure for the alleged violation. After such thirty (30) day period, the Party
28 seeking to enforce may, by new action, motion or order to show cause before the Superior Court

1 of Marin, seek to enforce the terms and conditions contained in this Consent Judgment. Should
2 the Party seeking to enforce prevail on any motion or application under this section, such Party
3 shall be entitled to recover its reasonable attorneys' fees and costs associated with such motion
4 or order to show cause from the non-moving Party.

5 **6. APPLICATION OF CONSENT JUDGMENT**

6 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
7 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
8 them.

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

10 **7.1** This Consent Judgment is a full, final and binding resolution between
11 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in
12 the Complaint against Defendant or its parents, subsidiaries, affiliates, directors, officers,
13 employees, agents, attorneys, distributors, customers or retailers (collectively, "Defendant
14 Releasees") based on failure to warn about alleged exposures to DEHP resulting from the
15 Products identified in Exhibit A of this Consent Judgment ("Released Products") that were sold
16 by Defendant on or prior to the date of entry of this Consent Judgment ("Covered Claims").
17 CEH, its directors, officers, employees and attorneys hereby release all Covered Claims against
18 Defendant Releasees. Compliance with the terms of this Consent Judgment constitutes
19 compliance with Proposition 65 for purposes of DEHP exposures from the Products.

20 **9. GOVERNING LAW**

21 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
22 State of California.

23 **10. RETENTION OF JURISDICTION**

24 **10.1** This Court shall retain jurisdiction of this matter to implement and
25 enforce the terms this Consent Judgment.

26 **11. PROVISION OF NOTICE**

27 **11.1** All notices required pursuant to this Consent Judgment and
28 correspondence shall be sent to the following:

1 For CEH:

Eric S. Somers
Lexington Law Group
1627 Irving Street
San Francisco, CA 94122

4 For Defendant:

Leslie Schenck
Garvey Schubert Barer
18th Floor
1191 Second Avenue
Seattle, WA 98101

8 **12. COURT APPROVAL**

9 **12.1** CEH will comply with the settlement notice provisions of Health and
10 Safety Code §25249.7(f) and Title 11 of the California Code of Regulations §3003.

11 **13. EXECUTION AND COUNTERPARTS**


12 **13.1** The stipulations to this Consent Judgment may be executed in
13 counterparts and by means of facsimile, which taken together shall be deemed to constitute one
14 document.

15 **14. AUTHORIZATION**

16 **14.1** Each signatory to this Consent Judgment certifies that he or she is fully
17 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter
18 into and execute the Consent Judgment on behalf of the party represented and legally bind that
19 party. The undersigned have read, understand and agree to all of the terms and conditions of
20 this Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees
21 and costs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:
CENTER FOR ENVIRONMENTAL HEALTH



Dated: 4/1/10

CHARLIE PIZARO

[Name]

ASSOCIATE DIRECTOR

[Title]

LACROSSE FOOTWEAR, INC.

Dated:

[Name]

[Title]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

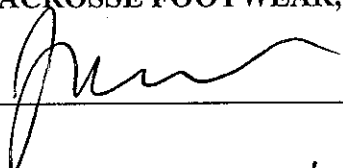
AGREED TO:
CENTER FOR ENVIRONMENTAL HEALTH

Dated:

[Name]

[Title]

LACROSSE FOOTWEAR, INC.



Dated: 4-2-10

Joseph P. Schneider

[Name]

President CEO.

[Title]

1 **ORDER AND JUDGMENT**

2 Based upon the stipulated Consent Judgment between CEH and LaCrosse
3 Footwear, Inc., the settlement is approved and the clerk is directed to enter judgment in
4 accordance with the terms herein.

5
6 Dated: JUL 14 2010

7 **JAMES R. RITCHIE**
8 _____
9 Judge, Superior Court of the State of California

Exhibit A

Style No.	Product Name
2200 1002	Foreman Jacket
2200 1001	Foreman Jacket
2200 2002	Foreman Bib
2200 2001	Foreman Bib
2100 8503	Work Force Suit
2100 8500	Work Force Suit
2100 8501	Work Force Suit
2100 8501	Work Force Suit
1400 7000	Road Crew Jacket
1400 7000	Road Crew Jacket
1400 7005	Road Crew Coat
1400 7005	Road Crew Coat
1400 7010	Road Crew Bib
1400 7010	Road Crew Bib
1400 7015	Road Crew Pant
1400 7015	Road Crew Pant
1100 4401	CK3 Jacket w/detachable hood
1100 4401	CK3 Jacket w/detachable hood
1400 4401	CK3 Jacket w/attached hood
1400 4401	CK3 Jacket w/attached hood
1600 4402	CK3 Plain Front Overall
1600 4402	CK3 Plain Front Overall
1700 4402	CK3 Fly Front Overall
1700 4402	CK3 Fly Front Overall
2100 4400	CK3 Raincoat w/detachable hood
2100 4400	CK3 Raincoat w/detachable hood
1100 8112	Chem-Tech I Jacket w/detachable hood
1100 8112	Chem-Tech I Jacket w/detachable hood

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

1600 8113	Chem-Tech I Bib
1600 8113	Chem-Tech I Bib
1800 8116	Chem-Tech I Coverall w/detachable hood
1800 8116	Chem-Tech I Coverall w/detachable hood
0000 8003	Aquablast
0000 8003	Aquablast
2800 7610	Poncho 50" X 80"
2800 7610	Poncho 50" X 80"
1100 8002	PVC/Polyester Jacket w/attached hood
1100 8002	PVC/Polyester Jacket w/attached hood
1600 8003	PVC/Polyester Plain Front Overall
1600 8003	PVC/Polyester Plain Front Overall
1900 8008	PVC/Polyester Waist Pant
1900 8008	PVC/Polyester Waist Pant
2100 8000	PVC/Polyester Raincoat w/detachable hood
2100 8000	PVC/Polyester Raincoat w/detachable hood
0000 8005	PVC/Polyester Suit w/detachable hood - yellow
0000 8005	PVC/Polyester Suit w/detachable hood - yellow