

ENDORSED
FILED
San Francisco County Superior Court

APR 06 2010

CLERK OF THE COURT

BY: _____
Deputy Clerk

1 LEXINGTON LAW GROUP
Mark N. Todzo, State Bar No. 168389
2 Eric S. Somers, State Bar No. 139050
Lisa Burger, State Bar No. 239676
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

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10

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

14 Plaintiff,)

15 v.)

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

22 Defendants.)
23 _____)
24
25
26
27
28

Case No. CGC-08-482792

**[PROPOSED] CONSENT JUDGMENT
RE: SHAMROCK MANUFACTURING
COMPANY, INC.**

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 “Complaint”), for civil penalties and injunctive relief
6 pursuant to the provisions of Cal. Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”).
7 On May 14, 2009, CEH amended the Complaint to name Shamrock Manufacturing Company,
8 Inc. (“Defendant”) as a party.

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

11 **1.3** On or about March 3, 2009, CEH served Defendant and the appropriate
12 public enforcement agencies with the requisite 60-day Notice (the “Notice”) alleging that
13 Defendant was in violation of Proposition 65 due to use and/or handling of the Products by
14 California consumers. CEH’s Notice and the Complaint in the CEH Action allege that
15 Defendant exposes people who use or otherwise handle the Products to di(2-ethylhexyl)
16 phthalate, CAS No. 117-81-7 (“DEHP”), a chemical known to the State of California to cause
17 cancer, birth defects and other reproductive harm, without first providing clear and reasonable
18 warning to such persons regarding the carcinogenicity and reproductive toxicity of DEHP. The
19 Notice and Complaint allege that Defendant’s conduct violates Health & Safety Code § 25249.6,
20 the warning provision of Proposition 65. Defendant denies such allegations and asserts that all of
21 its products are safe and comply with all applicable laws.

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

28 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of

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

9 **2. COMPLIANCE - REFORMULATION**

10 **2.1 Reformulation Standard – Removal of DEHP.** After 60-days following
11 the entry of this Consent Judgment (the “Compliance Date”), Defendant shall not manufacture,
12 distribute, ship, or sell, or cause to be manufactured, distributed or sold on its behalf, any Product
13 that contains in excess of trace amounts of DEHP. For purposes of this Consent Judgment only,
14 “in excess of trace amounts” is more than 600 parts per million (“ppm”). In reformulating the
15 Products to remove DEHP, Defendant may not use butyl benzyl phthalate, CAS No. 85-68-7
16 (“BBP”), di-n-hexyl phthalate, CAS No. 84-75-3 (“DnHP”), di-n-butyl phthalate, CAS No. 84-
17 74-2 (“DnBP”) or di-isodecyl phthalate, CAS No. 68515-49-1 and 26761-40-0 (“DIDP”) in
18 excess of trace amounts. DEHP, BBP, DnHP, DnBP and DIDP are together referred to herein as
19 “Listed Phthalates.”

20 **2.2 Certification From Suppliers.** For so long as Defendant manufactures,
21 distributes, ships, or sells the Products for sale to California consumers, Defendant shall issue
22 specifications to its suppliers requiring that the Products shall not contain DEHP or any other
23 Listed Phthalate in excess of trace amounts. Defendant shall obtain written certification from its
24 suppliers of the Products certifying that the Products do not contain any Listed Phthalate in
25 excess of trace amounts.

26 **2.3 Defendant’s Testing.** In order to ensure compliance with the
27 requirements of Section 2.1, Defendant shall cause to be conducted testing to confirm that
28 Products shipped for sale to California consumers do not contain in excess of trace amounts of

1 any Listed Phthalate. Testing shall be conducted in compliance with Section 2.1. All testing
2 pursuant to this Section shall be performed by an independent laboratory in accordance with both
3 of the following test protocols: (1) EPA SW8270C; and (2) EPA SW3580A (together referred to
4 as the "Test Protocols"). At the written request of CEH, the results of the testing performed
5 pursuant to this Section shall be made available to CEH on a confidential basis.

6 **2.3.1 Testing Frequency.** For each of the first two orders of Products
7 purchased from each of Defendant's suppliers after the Compliance Date, Defendant shall
8 randomly select and test the greater of 0.1% (one-tenth of one percent) or four, but in no case
9 more than five, of the total Products purchased from each supplier of the Products intended for
10 sale in California. Should Defendant change suppliers or begin using a new supplier of Products
11 after the Compliance Date, Defendant shall apply the testing frequency set forth above as though
12 the first shipment from a new supplier of Products were the first one following the Compliance
13 Date.

14 **2.3.2 Products That Contain Listed Phthalates Pursuant to**
15 **Defendant's Testing.** If the results of the testing required pursuant to Section 2.3 show Listed
16 Phthalates in excess of trace amounts in a Product, Defendant shall: (1) refuse to accept all of the
17 Products that were purchased under the particular purchase order; (2) send a notice to the
18 supplier explaining that such Products do not comply with either Defendant's specifications for
19 Listed Phthalates or the supplier's certification; and (3) apply the testing frequency set forth in
20 Section 2.3.1 as though the next shipment from the supplier were the first one following the
21 Compliance Date.

22 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory
23 testing of the Products. Any such testing shall be conducted by CEH at an independent
24 laboratory, in accordance with both of the Test Protocols. In the event that CEH's testing
25 demonstrates that any Product shipped by Defendant subsequent to the Compliance Date contains
26 Listed Phthalates in excess of trace amounts, CEH shall inform Defendant of the test results,
27 including information sufficient to permit Defendant to identify the Product(s). Defendant shall,
28 within 30 days following such notice, provide CEH, at the address listed in Section 11.1, with the

1 certification and testing information demonstrating its compliance with Sections 2.2 and 2.3 of
2 this Consent Judgment. If Defendant fails to provide CEH with information demonstrating that it
3 complied with Sections 2.2 and/or 2.3 or otherwise fails to identify an error in CEH's test results
4 which caused CEH to erroneously conclude that a Product did not comply with this Consent
5 Judgment, Defendant shall be liable for stipulated payments in lieu of penalties for Products for
6 which CEH produces tests demonstrating the presence of Listed Phthalates in excess of trace
7 amounts the Products. The payments shall be made to CEH and used for the purposes described
8 in Section 3.1.

9 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments
10 in lieu of penalties are warranted under Section 2.4, the stipulated payment amount shall be as
11 follows for each unit of Product for which CEH produces a test result showing that Defendant
12 sold that Product containing Listed Phthalates in excess of trace amounts after the Compliance
13 Date:

14	First Occurrence:	\$500
15	Second Occurrence:	\$750
16	Third Occurrence:	\$1,000
17	Thereafter:	\$2,500

18 **2.5 Products in the Stream of Commerce.** Defendant's Products that have
19 been manufactured, distributed, shipped, sold, or that are otherwise in the stream of commerce
20 prior to the Compliance Date shall be released from any claims that were brought or that could be
21 brought by CEH in the Complaint, as though they were Covered Claims within the meaning of
22 Section 7.1, below. As a result, the stipulated payments and other obligations of this Section 2
23 do not apply to these Products.

24 **3. SETTLEMENT PAYMENTS**

25 **3.1 Penalty.** Defendant shall pay to CEH \$500 as a penalty pursuant to Health
26 and Safety Code § 25249.7(b). CEH shall apportion such payment in accordance with Health
27 and Safety Code §25249.12.
28

1 **3.2 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
2 \$3,500 in lieu of any additional penalty pursuant to Health and Safety Code § 25249.7(b). CEH
3 shall use such funds to continue its work protecting people from exposures to toxic chemicals.
4 As part of this work, CEH intends to conduct periodic testing of the Products as set forth in
5 Section 2.4. The payment required under this Section shall be made payable to CEH.

6 **3.3 Attorneys' Fees and Costs.** Defendant shall pay \$8,500 to reimburse
7 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
8 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,
9 litigating and negotiating a settlement in the public interest. The payment required under this
10 Section shall be made payable to Lexington Law Group.

11 **3.4 Delivery of Payments.** All payments made pursuant to this Section 3
12 shall be delivered to the Lexington Law Group at the address set forth in Section 11.1 and shall
13 be delivered within 15 days of entry of this Consent Judgment.

14 **4. MODIFICATION OF CONSENT JUDGMENT**

15 **4.1** This Consent Judgment may be modified by written agreement of CEH
16 and Defendant, or upon motion of CEH or Defendant as provided by law.

17 **4.2** In the event that CEH in a subsequent Proposition 65 action shall define
18 "in excess of trace amounts" of Listed Phthalates (or any Phthalate identified as a Listed
19 Phthalate in this Consent Judgment) to be a figure higher than 600 ppm, then Defendant may
20 seek modification of this Consent Judgment upon a duly noticed motion and hearing to substitute
21 such higher figure for the 600 ppm reformulation standard in Section 2.1 and CEH shall not
22 oppose such motion.

23 **5. ENFORCEMENT OF CONSENT JUDGMENT**

24 **5.1** The Parties may, by motion or application for an order to show cause,
25 enforce the terms and conditions contained in this Consent Judgment. The prevailing party in
26 any such motion shall be entitled to recover its reasonable attorneys' fees and costs associated
27 with enforcing the Consent Judgment.
28

1 **6. APPLICATION OF CONSENT JUDGMENT**

2 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
3 hereto, their divisions, subdivisions, parents and subsidiaries, and the predecessors, successors or
4 assigns of any of them.

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

6 **7.1** This Consent Judgment is a full, final and binding resolution between
7 CEH, both on its own behalf and on behalf of the public interest pursuant to Health & Safety
8 Code § 25249.7(d), and Defendant of any violation of Proposition 65 that was or could have been
9 asserted in the Complaint against Defendant (including any claims that could be asserted in
10 connection with any of the Products covered by this Consent Judgment) or its parents,
11 subsidiaries, affiliates, directors, officers, employees, agents, attorneys, suppliers, distributors,
12 customers or retailers (collectively, “Defendant Releasees”) based on failure to warn about
13 alleged exposures to DEHP resulting from any Products manufactured, distributed or sold by
14 Defendant (“Covered Claims”) on or prior to the date of entry of this Consent Judgment. CEH,
15 its directors, officers, employees and attorneys, both on its own behalf and on behalf of the public
16 interest pursuant to Health & Safety Code § 25249.7(d), hereby release all Covered Claims
17 against Defendant Releasees. Compliance with the terms of this Consent Judgment constitutes
18 compliance with Proposition 65 for purposes of DEHP exposures from the Products.

19 **8. SEVERABILITY**

20 **8.1** In the event that any of the provisions of this Consent Judgment are held
21 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
22 affected.

23 **9. GOVERNING LAW**

24 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
25 State of California.

26 **10. RETENTION OF JURISDICTION**

27 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
28 the terms this Consent Judgment.

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

11. PROVISION OF NOTICE

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

For CEH:

Mark N. Todzo
Lexington Law Group
1627 Irving Street
San Francisco, CA 94122

For Defendant:

David L. Prince
1912 East Vernon Ave, Suite 100
P.O. Box 58003
Los Angeles, CA 90058

12. COURT APPROVAL

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

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.

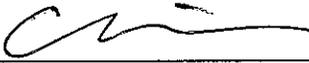
1 AGREED TO:

2

3 CENTER FOR ENVIRONMENTAL HEALTH

4

5



Dated: 2/12/10

6

Michael Green, Executive Director

7

CHARLIE PIZANO, Associate Director

8

SHAMROCK MANUFACTURING COMPANY, INC.

9

10

Dated: _____

11

12

[Name]

13

14

15

[Title]

16

17

18

19

20

21

22

23

24

25

26

27

28

1 **AGREED TO:**

2

3 **CENTER FOR ENVIRONMENTAL HEALTH**

4

5

6 Michael Green, Executive Director

Dated: _____

7

8 **SHAMROCK MANUFACTURING COMPANY, INC.**

9

10 Michael D. Strok

Dated: February 9, 2010

11

12 Michael D. Strok

[Name]

13

14 Vice President, Sales & Marketing

[Title]

15

16

17

18

19

20

21

22

23

24

25

26

27

28

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

ORDER AND JUDGMENT

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

Dated: APR 06 2010

CHARLOTTE WALTER WOOLARD

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