

1 LEXINGTON LAW GROUP
Mark N. Todzo, State Bar No. 168389
2 Howard Hirsch, State Bar No. 213209
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
9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO

11
12 CENTER FOR ENVIRONMENTAL HEALTH,)

13 Plaintiff,)

14 v.)

15 BASIC INTERNATIONAL, INC. DBA BASIC)
16 MEDICAL INDUSTRIES, INC.; DASH)
17 MEDICAL GLOVES, INC.; and Defendant)
DOES 1 through 200, inclusive,)

18 Defendants.)
19
20
21
22
23
24
25
26
27
28

ENDORSED
FILED
San Francisco County Superior Court

MAR 23 2010

CLERK OF THE COURT
BY: J. C. ROQUE
Deputy Clerk

Case No. CGC-09-494337

(JCR)
~~PROPOSED~~ CONSENT JUDGMENT
RE: PRO-STAT, INC.

1 **1. INTRODUCTION**

2 **1.1** On November 10, 2009, 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. Basic International, Inc., et al.*, San Francisco County Superior
5 Court Case Number CGC-09-494337 (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 December 22, 2009, CEH amended the Complaint to name Pro-Stat, Inc. (“Defendant”) as a
8 defendant.

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 September 22, 2009, CEH served Defendant and the
12 appropriate public enforcement agencies with the requisite 60-day Notice (the “Notice”) alleging
13 that 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 (“DEHP”), a chemical known to the State of California to cause cancer, birth defects
17 and other reproductive harm, without first providing clear and reasonable warning to such
18 persons regarding the carcinogenicity and reproductive toxicity of DEHP. The Notice and
19 Complaint allege that Defendant’s conduct violates Health & Safety Code § 25249.6, the
20 warning provision of Proposition 65. Upon receipt of CEH’s Notice, Defendant immediately
21 investigated the non-exclusive exemplar Product identified in the Notice and shortly after halted
22 sales of the non-exclusive exemplar to California customers while its investigation continued.
23 Defendant disputes such allegations and asserts that all of its Products are safe and comply with
24 all applicable laws.

25 **1.4** For purposes of this Consent Judgment only, the parties stipulate that this
26 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and
27 personal jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue is
28 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent

1 Judgment as a full and final resolution of all claims which were or could have been raised in the
2 Complaint based on the facts alleged therein.

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

12 **2. COMPLIANCE - REFORMULATION**

13 **2.1 Reformulation Standard – Removal of DEHP.** After 60-days following
14 the entry of this Consent Judgment (the "Compliance Date"), Defendant shall not manufacture,
15 distribute, ship, or sell, or cause to be manufactured, distributed or sold on its behalf, any
16 Product that contains in excess of trace amounts of DEHP. For purposes of this Consent
17 Judgment only, "in excess of trace amounts" is more than 600 parts per million ("ppm"). In
18 reformulating the Products to remove DEHP, Defendant may not use butyl benzyl phthalate
19 ("BBP"), di-n-hexyl phthalate ("DnHP"), di-n-butyl phthalate ("DBP") or di-isodecyl phthalate
20 ("DIDP") in excess of trace amounts. DEHP, BBP, DnHP, DBP and DIDP are together referred
21 to herein as "Listed Phthalates."

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

28 **2.3 Defendant's Testing.** In order to ensure compliance with the

1 requirements of Section 2.1, Defendant shall cause to be conducted testing to confirm that
2 Products shipped for sale to California consumers do not contain in excess of trace amounts of
3 any Listed Phthalate. Testing shall be conducted in compliance with Section 2.1. All testing
4 pursuant to this section shall be performed by an independent laboratory in accordance with both
5 of the following test protocols: (1) EPA SW8270C; and (2) EPA SW3580A (together referred to
6 as the "Test Protocols"). At the written request of CEH, the results of the testing performed
7 pursuant to this section shall be made available to CEH on a confidential basis.

8 **2.3.1 Testing Frequency.** For each of the first two orders of Products
9 purchased from each of Defendant's suppliers after the Compliance Date, Defendant shall
10 randomly select and test the greater of 0.1% (one-tenth of one percent) or eight, but in no case
11 more than ten, of the total Products purchased from each supplier of the Products intended for
12 sale in California. Following the testing of the first two orders as described above, Defendant
13 shall, for each subsequent order, randomly select and test the greater of 0.05% (one-twentieth of
14 one percent) or four, but in no case more than five, of the total Products purchased in that
15 calendar year for sale in California from each supplier of the Products. Should Defendant stop
16 selling or causing to be sold Products in California, the testing requirements of Section 2.3 shall
17 cease to apply. However, should Defendant begin such sales again, Defendant shall begin
18 testing again, and shall apply the testing frequency set forth in Section 2.3.1 as though the first
19 shipment following Defendant's re-initiation of Product sales were the first one following the
20 Compliance Date.

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

1 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory
2 testing of the Products. Any such testing shall be conducted by CEH at an independent
3 laboratory, in accordance with both of the Test Protocols. In the event that CEH's testing
4 demonstrates that the Products shipped by Defendant subsequent to the Compliance Date contain
5 Listed Phthalates in excess of trace amounts, CEH shall inform Defendant of the test results,
6 including information sufficient to permit Defendant to identify the Product(s). Defendant shall,
7 within 30 days following such notice, provide CEH, at the address listed in Section 11.1, with
8 the certification and testing information demonstrating its compliance with Sections 2.2 and 2.3
9 of this Consent Judgment. If Defendant fails to provide CEH with information demonstrating
10 that it complied with Sections 2.2 and/or 2.3 or otherwise fails to identify an error in CEH's test
11 results, which error caused CEH erroneously to conclude a Product did not comply with this
12 Consent Judgment, Defendant shall be liable for stipulated payments in lieu of penalties for
13 Products for which CEH produces tests demonstrating the presence of Listed Phthalates in the
14 Products. The payments shall be made to CEH and used for the purposes described in Section
15 3.1.

16 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated
17 payments in lieu of penalties are warranted under Section 2.4, the stipulated payment amount
18 shall be as follows for each unit of Product for which CEH produces a test result showing that
19 Defendant sold that Product containing Listed Phthalates after the Compliance Date:

20	First Occurrence:	\$500
21	Second Occurrence:	\$750
22	Third Occurrence:	\$1,000
23	Thereafter:	\$2,500

24 **2.5 Products in the Stream of Commerce.** Defendant's Products that have
25 been manufactured, distributed, shipped, sold, or that are otherwise in the stream of commerce
26 prior to the Compliance Date shall be released from any claims that were brought or that could
27 be brought by CEH in the Complaint, as though they were Covered Claims within the meaning
28 of Section 7.1, below. As a result, the stipulated payments and other obligations of this Section

1 2 do not apply to these Products.

2 **3. SETTLEMENT PAYMENTS**

3 **3.1 Civil Penalty.** Defendant shall pay \$1,000 as a civil penalty pursuant to
4 Health and Safety Code § 25249.7(b). The penalty shall be made payable to CEH, which will
5 apportion the penalty in accordance with Health and Safety Code § 25249.12.

6 **3.2 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
7 \$4,500 in lieu of any additional penalty pursuant to Health and Safety Code § 25249.7(b). CEH
8 shall use such funds to continue its work protecting people from exposures to toxic chemicals.
9 As part of this work, CEH intends to conduct periodic testing of the Covered Products as set
10 forth in Section 2.4. The payment required under this Section shall be made payable to CEH.

11 **3.3 Attorneys' Fees and Costs.** Defendant shall pay \$9,500 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 3
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, enforce
24 the terms and conditions contained in this Consent Judgment. In the event CEH is successful in
25 any such motion or application, CEH shall be entitled to recover its reasonable attorneys' fees
26 and costs associated with enforcing the Consent Judgment.

27 **6. APPLICATION OF CONSENT JUDGMENT**

28 **6.1** This Consent Judgment shall apply to and be binding upon the Parties

1 hereto, their divisions, subdivisions, parents and subsidiaries, and the predecessors, successors or
2 assigns of any of them.

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

4 **7.1** This Consent Judgment is a full, final and binding resolution between
5 CEH, both on its own behalf and on behalf of the public interest pursuant to Health & Safety
6 Code § 25249.7(d), and Defendant of any violation of Proposition 65 that was or could have
7 been asserted in the Complaint against Defendant (including any claims that could be asserted in
8 connection with any of the Products covered by this Consent Judgment) or its parents,
9 subsidiaries, affiliates, directors, officers, employees, agents, attorneys, suppliers, distributors,
10 customers or retailers (collectively, "Defendant Releasees") based on failure to warn about
11 alleged exposures to DEHP resulting from any Products manufactured, distributed or sold by
12 Defendant ("Covered Claims") on or prior to the date of entry of this Consent Judgment. CEH,
13 its directors, officers, employees and attorneys, both on its own behalf and on behalf of the
14 public interest pursuant to Health & Safety Code § 25249.7(d), hereby release all Covered
15 Claims against Defendant Releasees. Compliance with the terms of this Consent Judgment
16 constitutes compliance with Proposition 65 for purposes of DEHP exposures from the Products.

17 **8. SEVERABILITY**

18 **8.1** In the event that any of the provisions of this Consent Judgment are held
19 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
20 affected.

21 **9. GOVERNING LAW**

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

24 **10. RETENTION OF JURISDICTION**

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

27 **11. PROVISION OF NOTICE**

28 **11.1** All notices required pursuant to this Consent Judgment and

1 correspondence shall be sent to the following:

2 For CEH:

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

6 For Defendant:

7 Patrick McCrann
8 President
9 Pro-Stat, Inc.
10 285 Pierce Street
11 Somerset, NJ 08873

11 **12. COURT APPROVAL**

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

14 **13. EXECUTION AND COUNTERPARTS**

15 **13.1** The stipulations to this Consent Judgment may be executed in
16 counterparts and by means of facsimile, which taken together shall be deemed to constitute one
17 document.

18 **14. AUTHORIZATION**

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

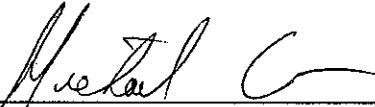
25
26
27
28

1 **AGREED TO:**

2 **CENTER FOR ENVIRONMENTAL HEALTH**

3

4



Dated: 2/1/10

5

Michael Green, Executive Director
CENTER FOR ENVIRONMENTAL HEALTH

6

7

8 **PRO-STAT, INC.**

9

10

11

Patrick McCrann, President
PRO-STAT, INC.

Dated: _____

12

13

14

15

16

17

18

19

20

21

22

23

24

25

26

27

28

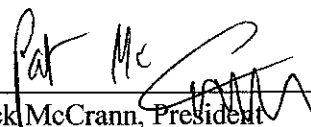
1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

AGREED TO:
CENTER FOR ENVIRONMENTAL HEALTH

Michael Green, Executive Director
CENTER FOR ENVIRONMENTAL HEALTH

Dated: _____

PRO-STAT, INC.



Patrick McCrann, President
PRO-STAT, INC.

Dated: 1/22/10

