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6 CENTER FOR ENVIRONMENTAL HEALTH

**ENDORSED
FILED**
San Francisco County Superior Court

APR 06 2010

CLERK OF THE COURT
BY: GINA GONZALES
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,)
13 Plaintiff,)
14 v.)
15)
16 BASIC INTERNATIONAL, INC. DBA BASIC)
MEDICAL INDUSTRIES, INC.; DASH)
17 MEDICAL GLOVES, INC.; and Defendant)
DOES 1 through 200, inclusive,)
18)
19 Defendants.)

Case No. CGC-09-494337

~~PROPOSED~~ CONSENT JUDGMENT
RE: BIG TIME PRODUCTS, LLC

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 Big Time Products, LLC
8 (“Defendant”) as a 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 October 14, 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) phthalate
16 (“DEHP”), a chemical known to the State of California to cause cancer, birth defects and other
17 reproductive harm, without first providing clear and reasonable warning to such persons
18 regarding the carcinogenicity and reproductive toxicity of DEHP. The Notice and Complaint
19 allege that Defendant’s conduct violates Health & Safety Code § 25249.6, the warning provision
20 of Proposition 65. Defendant denies such allegations and asserts that all of its products are safe
21 and comply with all applicable laws. Defendant further asserts that upon receipt of CEH’s
22 Notice, Defendant immediately investigated the non-exclusive exemplar Product identified in the
23 Notice and shortly after began labeling the Products with safe-harbor warning statements.

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

1 Complaint based on the facts alleged therein.

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

11 **2. COMPLIANCE - REFORMULATION**

12 **2.1 Reformulation Standard – Removal of DEHP.** After 60-days following
13 the entry of this Consent Judgment (the "Compliance Date"), Defendant shall not manufacture,
14 distribute, ship, or sell, or cause to be manufactured, distributed or sold on its behalf, any Product
15 that contains in excess of trace amounts of DEHP. For purposes of this Consent Judgment only,
16 "in excess of trace amounts" is more than 600 parts per million ("ppm"). In reformulating the
17 Products to remove DEHP, Defendant may not use butyl benzyl phthalate ("BBP"), di-n-hexyl
18 phthalate ("DnHP"), di-n-butyl phthalate ("DBP") or di-isodecyl phthalate ("DIDP") in excess of
19 trace amounts. DEHP, BBP, DnHP, DBP and DIDP are together referred to herein as "Listed
20 Phthalates."

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

27 **2.3 Defendant's Testing.** In order to ensure compliance with the
28 requirements of Section 2.1, Defendant shall cause to be conducted testing to confirm that

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

7 **2.3.1 Testing Frequency.** For each of the first five orders of Products
8 purchased from each of Defendant's suppliers after the Compliance Date, Defendant shall
9 randomly select and test the greater of 0.1% (one-tenth of one percent) or two, but in no case
10 more than four, of the total Products purchased from each supplier of the Products intended for
11 sale in California. Should Defendant stop selling or causing to be sold Products in California,
12 the testing requirements of Section 2.3 shall cease to apply. However, should Defendant begin
13 such sales again, Defendant shall begin testing again, and shall apply the testing frequency set
14 forth in 2.3.1 as though the first shipment following Defendant's re-initiation of Product sales
15 were the first one following the Compliance Date.

16 **2.3.2 Products That Contain Listed Phthalates Pursuant to**
17 **Defendant's Testing.** If the results of the testing required pursuant to Section 2.3 show Listed
18 Phthalates in excess of trace amounts in a Product, Defendant shall: (1) refuse to accept all of the
19 Products that were purchased under the particular purchase order subject to the First Time
20 Exception set forth in Section 2.3.3; (2) send a notice to the supplier explaining that such
21 Products do not comply with either Defendant's specifications for Listed Phthalates or the
22 suppliers' certification; and (3) apply the testing frequency set forth in 2.3.1 as though the next
23 shipment from the supplier were the first one following the Compliance Date.

24 **2.3.3 First Time Exception.** Notwithstanding the requirements of
25 Section 2.3.2, the first time a Product from any supplier is shown to contain Listed Phthalates in
26 excess of trace amounts pursuant to the testing set forth in Section 2.3, Defendant may opt not to
27 refuse acceptance of the Products in the shipment provided Defendant shall not distribute and/or
28 sell, or cause to be distributed and/or sold, any Product purchased from that supplier under the

1 particular purchase order unless such Products bear a label containing the following warning
2 language:

3 **WARNING: This product contains a chemical known to the State of**
4 **California to cause cancer, birth defects or other reproductive harm.**

5 The warning statement shall be prominently displayed on the package with such
6 conspicuousness, as compared with other words, statements, or designs as to render it likely to be
7 read and understood by an ordinary individual. The warning statement shall not be preceded,
8 followed, or surrounded by words, symbols, or other matter that reduces its conspicuousness or
9 that introduces, modifies, qualifies, or explains the required text, such as "legal notice required
10 by law." Should testing of Products pursuant to Section 2.3 from the same supplier from any
11 subsequent shipment demonstrate that a Product contains Listed Phthalates in excess of trace
12 amounts, Defendant must refuse to accept the entire shipment.

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

27 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments
28 in lieu of penalties are warranted under section 2.4, the stipulated payment amount shall be as

1 follows for each unit of Product for which CEH produces a test result showing that Defendant
2 sold that Product containing Listed Phthalates after the Compliance Date:

3	First Occurrence:	\$500
4	Second Occurrence:	\$750
5	Third Occurrence:	\$1,000
6	Thereafter:	\$2,500

7 **2.5 Products in the Stream of Commerce.** Defendant's Products that have
8 been manufactured, distributed, shipped, sold, or that are otherwise in the stream of commerce
9 prior to the Compliance Date shall be released from any claims that were brought or that could be
10 brought by CEH in the Complaint, as though they were Covered Claims within the meaning of
11 Section 7.1, below. As a result, the stipulated payments and other obligations of this Section 2
12 do not apply to these Products.

13 **3. SETTLEMENT PAYMENTS**

14 **3.1 Penalty.** Defendant shall pay \$1,000 as a civil penalty pursuant to Health
15 and Safety Code § 25249.7(b). The penalty shall be made payable to CEH, which will apportion
16 the penalty in accordance with Health and Safety Code § 25249.12.

17 **3.2 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
18 \$5,000 in lieu of any additional penalty pursuant to Health and Safety Code § 25249.7(b). CEH
19 shall use such funds to continue its work protecting people from exposures to toxic chemicals.
20 As part of this work, CEH intends to conduct periodic testing of the Covered Products as set
21 forth in Section 2.4. The payment required under this Section shall be made payable to CEH.

22 **3.3 Attorneys' Fees and Costs.** Defendant shall pay \$10,000 to reimburse
23 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
24 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,
25 litigating and negotiating a settlement in the public interest. The payment required under this
26 section shall be made payable to Lexington Law Group.

27 **3.4 Delivery of Payments.** All payments made pursuant to this Section 3
28 shall be delivered to the Lexington Law Group at the address set forth in Section 11.1 and shall

1 be delivered within 10 days of entry of this Consent Judgment.

2 **4. MODIFICATION OF CONSENT JUDGMENT**

3 **4.1** This Consent Judgment may be modified by written agreement of CEH
4 and Defendant, or upon motion of CEH or Defendant as provided by law.

5 **5. ENFORCEMENT OF CONSENT JUDGMENT**

6 **5.1** CEH may, by motion or application for an order to show cause, enforce
7 the terms and conditions contained in this Consent Judgment. In the event CEH is successful in
8 any such motion or application, CEH shall be entitled to recover its reasonable attorneys' fees
9 and costs associated with enforcing the Consent Judgment.

10 **6. APPLICATION OF CONSENT JUDGMENT**

11 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
12 hereto, their divisions, subdivisions, parents and subsidiaries, and the predecessors, successors or
13 assigns of any of them.

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

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

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

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, LLP
1627 Irving Street
San Francisco, CA 94122

For Defendant:

Mike Burkhalter
Vice President Operations
Big Time Products, LLC
2 Wilbanks Road
Rome, GA 30161

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.

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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



Michael Green, Executive Director
CENTER FOR ENVIRONMENTAL HEALTH

Dated: 2/8/10

BIG TIME PRODUCTS, LLC

Mark White, Chief Operating Officer
BIG TIME PRODUCTS, LLC

Dated: _____

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CENTER FOR ENVIRONMENTAL HEALTH

Michael Green, Executive Director
CENTER FOR ENVIRONMENTAL HEALTH

Dated: _____

BIG TIME PRODUCTS, LLC



Mark White, Chief Operating Officer
BIG TIME PRODUCTS, LLC

Dated: 2/2/10

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ORDER AND JUDGMENT

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

Dated: APR 06 2010

PETER J. BUSCH
Judge, Superior Court of the State of California