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6 CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED  
FILED  
San Francisco County Superior Court

NOV 09 2010

CLERK OF THE COURT  
BY: GINA GONZALES  
Deputy Clerk

7  
8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 IN AND FOR THE COUNTY OF SAN FRANCISCO

10  
11 CENTER FOR ENVIRONMENTAL  
HEALTH,

12 Plaintiff,

13 vs.

14 MAPA SPONTEX, INC.; VWR, INC.;  
15 VWR INTERNATIONAL, INC.; VWR  
INTERNATIONAL, LLC; Defendant  
16 DOES 1 through 200, inclusive,

17 Defendants.

Case No. CGC-10-497670

~~PROPOSED~~ CONSENT JUDGMENT RE:  
MAPA SPONTEX, INC.

18  
19 **1. INTRODUCTION**

20 **1.1** On March 10, 2009, plaintiff the Center for Environmental Health (“CEH”),  
21 a non-profit corporation acting in the public interest, filed a complaint entitled *Center for*  
22 *Environmental Health v. Mapa Spontex, Inc., et al.*, San Francisco County Superior Court Case  
23 Number CGC-10-497670 (the “Complaint”), for civil penalties and injunctive relief pursuant to  
24 the provisions of Cal. Health & Safety Code § 25249.5, et seq. (“Proposition 65”). The  
25 Complaint names Mapa Spontex, Inc. (“Mapa Spontex” or “Defendant”) as a defendant.

26 **1.2** Defendant is a corporation that employs 10 or more persons and  
27 manufactured, distributed and/or sold Mapa Spontex branded disposable vinyl gloves in the State  
28 of California. As used in this Consent Judgment, “Products” refers to Mapa Spontex branded

1 disposable vinyl gloves manufactured or shipped for distribution and/or sale by Defendant in the  
2 State of California.

3           **1.3**     On or about November 13, 2009, CEH served Defendant and the  
4 appropriate public enforcement agencies with a 60-day notice (the "Notice") alleging that  
5 Defendant had distributed the Product without required warnings, in violation of Proposition 65.  
6 Specifically, CEH's Notice, as well as the Complaint in this action, allege that Defendant has  
7 caused people who use or otherwise handle the Product to be exposed to di(2-ethylhexyl)  
8 phthalate ("DEHP"), a chemical known to the State of California to cause cancer, birth defects  
9 and other reproductive harm, without first providing clear and reasonable warning to such persons  
10 regarding the carcinogenicity and reproductive toxicity DEHP. The Notice and Complaint allege  
11 that Defendant's conduct violates Health & Safety Code § 25249.6, the warning provision of  
12 Proposition 65.

13           **1.4**     Defendant disputes the CEH allegations, has answered the Complaint  
14 denying the allegations and asserting defenses, and asserts that all of its Products are safe and  
15 comply with all applicable laws. Defendant further asserts that the Product was reformulated in  
16 2008, prior to the Notice, to reduce and eliminate DEHP.

17           **1.5**     For purposes of this Consent Judgment only, the Parties stipulate that this  
18 Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint and  
19 personal jurisdiction over Defendant as to the acts alleged in CEH's Complaint, that venue is  
20 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent  
21 Judgment as a full and final resolution of all claims which were or could have been raised in the  
22 Complaint based on the facts alleged therein.

23           **1.6**     The Parties enter into this Consent Judgment pursuant to a settlement of  
24 certain disputed claims between the Parties as alleged in the Complaint. By executing this  
25 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'  
26 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of  
27 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the  
28 Consent Judgment constitute or be construed as an admission by the Parties of any fact,

1 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall  
2 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or  
3 any other or future legal proceedings.

## 4 2. COMPLIANCE

5 2.1 **Reformulation.** Upon entry of this Consent Judgment, Defendant shall  
6 not manufacture or ship for sale or distribution in California, or cause to be manufactured or  
7 shipped for distribution or sale in California, any Products that contain in excess of trace amounts  
8 of DEHP. For purposes of this Consent Judgment only, "in excess of trace amounts" shall mean  
9 more than 600 parts per million ("ppm"). In reformulating such Products to reduce or eliminate  
10 DEHP, Defendant shall not use butyl benzyl phthalate ("BBP"), di-n-hexyl phthalate ("DnHP"),  
11 di-n-buytl phthalate ("DBP") or di-isodecyl phthalate ("DIDP") in excess of trace amounts.  
12 DEHP, BBP, DnHP, DBP and DIDP are together referred to herein as "Listed Phthalates."

13 2.2 **Certification from Suppliers.** Defendant shall issue specifications to its  
14 suppliers of the Products requiring that the Products not contain any Listed Phthalate in excess of  
15 trace amounts. Defendant shall obtain written certification from its suppliers of the Products  
16 certifying that the Products do not contain DEHP in excess of trace amounts. Defendant has  
17 provided CEH with sufficient confirmation from its current supplier to satisfy the requirements  
18 of this section. However, should Defendant obtain a different supplier for the Products, shall  
19 issue specifications and obtain certifications as required herein.

20 2.3 **Defendant's Testing.** Defendant has provided CEH with sufficient test  
21 data regarding its current supplier to satisfy the testing requirements of this section for such  
22 supplier. However, should Defendant obtain a different supplier for the Products, the following  
23 testing requirements shall apply:

24 (a) **Testing Protocols.** In order to ensure compliance with the reformulation  
25 requirements of Section 2.1, Defendant shall cause to be conducted testing to confirm that  
26 Products shipped for sale to California consumers do not contain in excess of trace amounts of  
27 any Listed Phthalate. Testing shall be conducted in compliance with Section 2.1. All testing  
28 pursuant to this section shall be performed by an independent laboratory in accordance with both

1 of the following test protocols: (1) EPA SW8270C; and (2) EPA SW3580A (together referred to  
2 as the "Test Protocols"). At the written request of CEH, the results of the testing performed  
3 pursuant to this section shall be made available to CEH on a confidential basis.

4 (b) **Testing Frequency.** For each of the first two orders of Products purchased  
5 from each of Defendant's suppliers after the Compliance Date, Defendant shall randomly select  
6 and test the greater of 0.1% (one-tenth of one percent) or eight, but in no case more than ten, of  
7 the total Products purchased from each supplier of the Products intended for sale in California.  
8 Following the testing of the first two orders as described above, Defendant shall, for each  
9 subsequent order, randomly select and test the greater of 0.05% (one-twentieth of one percent) or  
10 four, but in no case more than five, of the total Products purchased in that calendar year for sale in  
11 California from each supplier of the Products.

12 (c) **Products That Contain Listed Phthalates Pursuant to Defendant's**  
13 **Testing.** If the results of the testing required pursuant to Section 2.3(i) show any Listed Phthalate  
14 in excess of trace amounts in a Product, Defendant shall: (1) refuse to accept all of the Products  
15 that were purchased under the particular purchase order; (2) send a notice to the supplier  
16 explaining that such Products do not comply with either Defendant's specifications for Listed  
17 Phthalates or the suppliers' certification; and (3) apply the testing frequency set forth in Section  
18 2.2.3 as though the next shipment from the supplier were the first one following the Compliance  
19 Date.

20 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory  
21 testing of the Products. Any such testing shall be conducted by CEH at an independent  
22 laboratory, in accordance with both of the Test Protocols. In the event that CEH's testing  
23 demonstrates that Products shipped by Defendant to California subsequent to the Compliance  
24 Date contain Listed Phthalates in excess of trace amounts, CEH shall inform Defendant of the test  
25 results, including information sufficient to permit Defendant to identify the Product(s).  
26 Defendant shall, within 30 days following such notice, provide CEH, at the address listed in  
27 Section 11.1, with the certification and testing information demonstrating its compliance with  
28 Sections 2.2 and 2.3 of this Consent Judgment. If Defendant fails to provide CEH with

1 information demonstrating that it complied with Sections 2.2 and/or 2.3 or otherwise fails to  
2 identify an error in CEH's test results, which error caused CEH erroneously to conclude a Product  
3 did not comply with this Consent Judgment, Defendant shall be liable for stipulated payments in  
4 lieu of penalties for Products for which CEH produces tests demonstrating the presence of Listed  
5 Phthalates in the Products. The payments shall be made to CEH and used for the purposes  
6 described in Section 3.2.

7 **2.5 Stipulated Payments In Lieu of Penalties.** If stipulated payments in lieu  
8 of penalties are warranted under Section 2.4, the stipulated payment amount shall be as follows  
9 for each unit of Product for which CEH produces a test result showing that Defendant sold that  
10 Product containing Listed Phthalates after the Compliance Date:

11	First Occurrence:	\$500
12	Second Occurrence:	\$750
13	Third Occurrence:	\$1,000
14	Thereafter:	\$2,500

15 **2.6 Products in the Stream of Commerce.** Defendant's Products that have  
16 been manufactured, distributed, shipped, sold, or that are otherwise in the stream of commerce  
17 prior to the Compliance Date shall be released from any claims that were brought or that could be  
18 brought by CEH in the Complaint, as though they were Covered Claims within the meaning of  
19 Section 6.1, below. As a result, the obligations of this Section 2 do not apply to these Products.

### 20 **3. SETTLEMENT PAYMENTS**

21 **3.1 Penalty.** Defendant shall pay \$800 as a civil penalty pursuant to Health  
22 and Safety Code § 25249.7(b). The penalty shall be made payable to CEH, which will apportion  
23 the penalty in accordance with Health and Safety Code § 25249.12.

24 **3.2 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH  
25 \$6,200 in lieu of any additional penalty pursuant to Health and Safety Code § 25249.7(b). CEH  
26 shall use such funds to continue its work protecting people from exposures to toxic chemicals. As  
27 part of this work, CEH intends to conduct periodic testing of the Products as set forth in  
28 Section 2.1.3. In addition, as part of its Community Environmental Action and Justice Fund,

1 CEH will use four percent of such funds to award grants to grassroots environmental justice  
2 groups working to educate and protect people from exposures to toxic chemicals. The method of  
3 selection of such groups can be found at the CEH web site at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The  
4 payment in lieu of penalty check shall be made payable to CEH.

5 **3.3 Attorneys' Fees and Costs.** Defendant shall pay \$13,000 to reimburse  
6 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any  
7 other costs incurred as a result of investigating, providing Notice, filing the Complaint, and  
8 negotiating seeking court approval for a settlement in the public interest. The payment required  
9 under this section shall be made payable to Lexington Law Group.

10 **3.4 Delivery of Payments.** The payments required under this Section 3 shall  
11 be delivered to the Lexington Law Group at the address set forth in Section 11.1 within 10 days  
12 of entry of this Consent Judgment.

13 **4. MODIFICATION OF CONSENT JUDGMENT**

14 **4.1** This Consent Judgment may be modified by written agreement of CEH and  
15 Defendant, or upon motion of CEH or Defendant as provided by law.

16 **5. ENFORCEMENT OF CONSENT JUDGMENT**

17 **5.1** CEH may, by motion or application for an order to show cause, enforce the  
18 terms and conditions contained in this Consent Judgment. Should CEH prevail on any such  
19 motion, it shall be entitled to recover its reasonable attorneys' fees and costs associated with  
20 enforcing the Consent Judgment.

21 **6. APPLICATION OF CONSENT JUDGMENT**

22 **6.1** This Consent Judgment shall apply to and be binding upon the Parties  
23 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of  
24 them.

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

26 **7.1** This Consent Judgment is a full, final and binding resolution between CEH  
27 and Defendant of any violation of Proposition 65 that was or could have been asserted in the  
28 Complaint against Defendant (including any claims that could be asserted in connection with any

1 of the Products covered by this Consent Judgment), and/or against Defendant's parents,  
2 subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, retailers or  
3 customers (collectively, "Defendant Releasees"), based on failure to warn of alleged exposures to  
4 DEHP or any Listed Phthalates resulting from any Products manufactured or shipped for  
5 distribution or sale by Defendant ("Covered Claims") on or prior to the date of entry of this  
6 Consent Judgment. CEH, its directors, officers, employees and attorneys, on behalf of  
7 themselves and the public, hereby release all Covered Claims against Defendant Releasees.  
8 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65  
9 for purposes of exposures to Listed Phthalates that may be contained in the Products.

10 **8. SEVERABILITY**

11 **8.1** In the event that any of the provisions of this Consent Judgment are held by  
12 a court to be unenforceable, the validity of the enforceable provisions shall not be adversely  
13 affected.

14 **9. GOVERNING LAW**

15 **9.1** The terms of this Consent Judgment shall be governed by the laws of the  
16 State of California.

17 **10. RETENTION OF JURISDICTION**

18 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce  
19 the terms this Consent Judgment.

20 **11. PROVISION OF NOTICE**

21 **11.1** All notices required pursuant to this Consent Judgment and correspondence  
22 shall be sent to the following:

23 For CEH:

24 Mark N. Todzo  
25 Lexington Law Group, LLP  
26 1627 Irving Street  
27 San Francisco, CA 94122  
28

1 For Defendant:

2 Christopher Locke  
3 Farella Braun + Martel LLP  
4 235 Montgomery Street, 17<sup>th</sup> Floor  
5 San Francisco, CA 94104

6 **12. COURT APPROVAL**

7 **12.1** CEH will comply with the settlement notice provisions of Health and  
8 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003. If this  
9 Consent Judgment is not approved by the Court, it shall be of no further force or effect.

10 **13. EXECUTION AND COUNTERPARTS**

11 **13.1** The stipulations to this Consent Judgment may be executed in counterparts  
12 and by means of facsimile, which taken together shall be deemed to constitute one document.

13 **14. AUTHORIZATION**

14 **14.1** Each signatory to this Consent Judgment certifies that he or she is fully  
15 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into  
16 and execute the Consent Judgment on behalf of the party represented and legally bind that party.  
17 The undersigned have read, understand and agree to all of the terms and conditions of this  
18 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and  
19 costs.

20 **AGREED TO:**

21 **CENTER FOR ENVIRONMENTAL**  
22 **HEALTH**

**MAPA SPONTEX, INC.**

23 

24 \_\_\_\_\_  
25 Charlie Pizarro, Assistant Director  
26 Center for Environmental Health

\_\_\_\_\_

\_\_\_\_\_

27 Dated: 8/13/10

Dated:

1 For Defendant:

2 Christopher Locke  
3 Farella Braun + Martel LLP  
4 235 Montgomery Street, 17<sup>th</sup> Floor  
5 San Francisco, CA 94104

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20 **AGREED TO:**

21 **CENTER FOR ENVIRONMENTAL  
22 HEALTH**

23 \_\_\_\_\_  
Charlie Pizarro, Assistant Director  
Center for Environmental Health

24 **MAPA SPONTEX, INC.**



25 \_\_\_\_\_  
Marc Boussemart

26 \_\_\_\_\_  
President

27 Dated:

28 Dated: 08/17/2010

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**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between CEH and MAPA SPONTEX, INC., the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein,

Dated: **NOV 09 2010**

**CHARLOTTE WALTER WOOLARD**

Judge, Superior Court of the State of California

*CGC-10-497670*