

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

ENDORSED
FILED
ALAMEDA COUNTY

JUL 15 2015

CLERK OF THE SUPERIOR COURT
BY YOLANDA ESTRADA Deputy

SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL HEALTH,
a non-profit corporation,

Plaintiff,

vs.

SHOCK DOCTOR, INC., *et al.*,

Defendants.

) Case No. RG 15-756764

) ~~PROPOSED~~ CONSENT JUDGMENT
) AS TO SHOCK DOCTOR, INC.

1. INTRODUCTION

1.1 This Consent Judgment is entered into by Plaintiff Center for Environmental Health, a California non-profit corporation (“CEH”), and Defendant Shock Doctor, Inc. (“Defendant”) to settle claims asserted by CEH against Defendant as set forth in the operative Complaint in the matter entitled *Center for Environmental Health v. Shock Doctor, Inc., et al.*, Alameda County Superior Court Case No. RG 15-756764 (the “Action”). CEH and Defendant are referred to collectively as the “Parties.”

1.2 On October 31, 2014, CEH provided a “Notice of Violation of Proposition 65” to the California Attorney General, the District Attorneys of every county in California, the City

1 Attorneys of every California city with a population greater than 750,000, and to Defendant
2 regarding the presence of lead and lead compounds (collectively referred to herein as "Lead") in
3 football gloves made with leather, vinyl, or imitation leather materials ("Covered Products").

4 1.3 On January 30, 2015, CEH filed its Complaint in the Action to name
5 Defendant as a party.

6 1.4 Defendant is a corporation that employs ten (10) or more persons, and that
7 manufactures, distributes, and/or sells Covered Products in the State of California.

8 1.5 For purposes of this Consent Judgment only, the Parties stipulate that this
9 Court has jurisdiction over the allegations of violations contained in the Complaint and personal
10 jurisdiction over Defendant as to the acts alleged in the Complaint, that venue is proper in the
11 County of Marin, and that this Court has jurisdiction to enter this Consent Judgment as a full and
12 final resolution of all claims which were or could have been raised in the Complaint based on the
13 facts alleged therein with respect to Covered Products manufactured, distributed, and/or sold by
14 Defendant.

15 1.6 CEH and Defendant enter into this Consent Judgment as a full and final
16 settlement of all claims that were raised in the Complaint, or which could have been raised in the
17 Complaint, arising out of the facts or conduct related to Defendant alleged therein. By execution
18 of this Consent Judgment and agreeing to comply with its terms, the Parties do not admit any
19 facts or conclusions of law including, but not limited to, any facts or conclusions of law
20 suggesting or demonstrating any violations of Proposition 65 or any other statutory, common law,
21 or equitable requirements. Nothing in this Consent Judgment is or shall be construed as an
22 admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall
23 compliance with the Consent Judgment constitute or be construed as an admission by the Parties
24 of any fact, conclusion of law, issue of law, or violation of law. Defendant denies the material,
25 factual, and legal allegations in CEH's Complaint and expressly denies any wrongdoing
26 whatsoever. Nothing in this Consent Judgment shall prejudice, waive, or impair any right,
27 remedy, argument, or defense the Parties may have in this or any other pending or future legal
28 proceedings. This Consent Judgment is the product of negotiation and compromise and is

1 accepted by the Parties solely for purposes of settling, compromising, and resolving issues
2 disputed in this action.

3 **2. INJUNCTIVE RELIEF**

4 2.1 **Reformulation of Covered Products.** As of the date of entry of this Consent
5 Judgment (the "Effective Date"), Defendant shall not manufacture, distribute, sell, or offer for
6 sale any Covered Product unless such Covered Product complies with the following Lead Limits:

7 2.1.1 "Paint or other Surface Coatings" as that term is defined in 16 C.F.R.
8 § 1303.2(b): no more than 0.009 percent Lead by weight (90 parts per million ("ppm")).

9 2.1.2 Polyvinyl Chloride: no more than .02 percent Lead by weight (200 ppm).

10 2.1.3 All other materials: no more than .03 percent Lead by weight (300 ppm).

11 2.2 **Market Withdrawal of Covered Products.** On or before the Effective Date,
12 Defendant shall cease shipping the Cutters Rev Pro Glove in Orange, Model No. S450, UPC No.
13 8-44018-03242-0, as identified in CEH's pre-suit Notice of Violation to Defendant (the "Recall
14 Covered Products"), to stores and/or customers in California, and Defendant shall withdraw the
15 Recall Covered Products from the market in California, and, at a minimum, send instructions to
16 any of its stores and/or customers that offer the Recall Covered Products for sale in California to
17 cease offering such Recall Covered Products for sale and to either return all Recall Covered
18 Products to Defendant for destruction, or to directly destroy the Recall Covered Products. Any
19 destruction of the Recall Covered Products shall be in compliance with all applicable laws.
20 Defendant shall keep and make available to CEH for inspection and copying records and
21 correspondence regarding the market withdrawal and destruction of the Recall Covered Products.
22 If there is a dispute over the corrective action, the Parties shall meet and confer before seeking
23 any remedy in court.

24 **3. ENFORCEMENT**

25 3.1 **Enforcement Procedures.** CEH may, by motion or application for an order
26 to show cause before the Superior Court of Alameda County, enforce the terms and conditions
27 contained in this Consent Judgment. Prior to bringing any motion or application to enforce the
28 requirements of Section 2 above, CEH shall provide Defendant with a Notice of Violation and a

1 copy of any test results which purportedly support CEH's Notice of Violation. The Parties shall
2 then meet and confer regarding the basis for CEH's anticipated motion or application in an
3 attempt to resolve it informally, including providing Defendant a reasonable opportunity of at
4 least thirty (30) days to cure any alleged violation. Should such attempts at informal resolution
5 fail, CEH may file its enforcement motion or application. The prevailing party on any motion to
6 enforce this Consent Judgment shall be entitled to its reasonable attorney's fees and costs
7 incurred as a result of such motion or application. This Consent Judgment may only be enforced
8 by the Parties.

9 **4. PAYMENTS**

10 4.1 **Payments From Defendant.** Within five (5) days of the entry of this Consent
11 Judgment, Defendant shall pay the total sum of \$32,500 as a settlement payment.

12 4.2 **Allocation of Payments.** The total settlement amount for Defendant shall be
13 paid in three separate checks delivered to the offices of the Lexington Law Group (Attn: Howard
14 Hirsch), 503 Divisadero Street, San Francisco, California 94117, and made payable and allocated
15 as follows:

16 4.2.1 Defendant shall pay the sum of \$4,300 as a penalty pursuant to Health &
17 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health &
18 Safety Code § 25249.12. The penalty check shall be made payable to the Center for
19 Environmental Health.

20 4.2.2 Defendant shall pay the sum of \$6,400 as payment to CEH in lieu of
21 penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title
22 11, § 3202(b). CEH will use such funds to continue its work educating and protecting people
23 from exposures to toxic chemicals, including heavy metals. CEH may also use a portion of such
24 funds to monitor compliance with the reformulation requirements of this and other similar
25 Consent Judgments and to purchase and test Covered Products to confirm compliance with such
26 reformulation requirements. In addition, as part of its *Community Environmental Action and*
27 *Justice Fund*, CEH will use four percent of such funds to award grants to grassroots
28 environmental justice groups working to educate and protect people from exposures to toxic

1 chemicals. The method of selection of such groups can be found at the CEH web site at
2 www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the
3 Center for Environmental Health.

4 4.2.3 Defendant shall pay the sum of \$21,800 as reimbursement of reasonable
5 attorneys' fees and costs. The attorneys' fees and cost reimbursement check shall be made
6 payable to the Lexington Law Group.

7 **5. MODIFICATION AND DISPUTE RESOLUTION**

8 5.1 **Modification.** This Consent Judgment may be modified from time to time by
9 express written agreement of the Parties, with the approval of the Court, or by an order of this
10 Court upon motion and in accordance with law.

11 5.2 **Notice; Meet and Confer.** Any Party seeking to modify this Consent
12 Judgment shall attempt in good faith to meet and confer with the other Party prior to filing a
13 motion to modify the Consent Judgment.

14 **6. CLAIMS COVERED AND RELEASE**

15 6.1 This Consent Judgment is a full, final, and binding resolution between CEH
16 and Defendant and Defendant's parents, shareholders, divisions, subdivisions, subsidiaries,
17 partners, sister companies, and their successors and assigns ("Defendant Releasees"), and all to
18 whom they distribute or sell Covered Products including, but not limited to, distributors,
19 wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Downstream
20 Defendant Releasees"), of any violation of Proposition 65 or any other statutory or common law
21 claims that have been or could have been asserted in the public interest against Defendant,
22 Defendant Releasees, and Downstream Defendant Releasees, regarding the failure to warn about
23 exposure to Lead arising in connection with Covered Products manufactured, distributed, or sold
24 by Defendant prior to the Effective Date.

25 6.2 CEH, for itself releases, waives, and forever discharges any and all claims
26 against Defendant, Defendant Releasees, and Downstream Defendant Releasees arising from any
27 violation of Proposition 65 or any other statutory or common law claims that have been or could
28 have been asserted in the public interest regarding the failure to warn about exposure to Lead

1 arising in connection with Covered Products manufactured, distributed, or sold by Defendant
2 prior to the Effective Date.

3 6.3 Compliance with the terms of this Consent Judgment by Defendant and the
4 Defendant Releasees shall constitute compliance with Proposition 65 by Defendant, the
5 Defendant Releasees, and their Downstream Defendant Releasees with respect to any alleged
6 failure to warn about Lead in Covered Products manufactured, distributed, or sold by Defendant
7 after the Effective Date.

8 **7. PROVISION OF NOTICE**

9 7.1 When any Party is entitled to receive any notice under this Consent Judgment,
10 the notice shall be sent by first class and electronic mail as follows:

11 7.1.1 **Notices to Defendant.** The person for Defendant to receive Notices
12 pursuant to this Consent Judgment shall be:

13 Melissa Jones
14 Partner
15 Stoel Rives LLP
16 500 Capitol Mall, Suite 1600
17 Sacramento, CA 95814
18 majones@stoel.com

19 7.1.2 **Notices to Plaintiff.** The persons for CEH to receive Notices pursuant to
20 this Consent Judgment shall be:

21 Howard Hirsch
22 Joseph Mann
23 Lexington Law Group
24 503 Divisadero Street
25 San Francisco, CA 94117
26 hhirsch@lexlawgroup.com
27 jmann@lexlawgroup.com

28 7.2 Any Party may modify the person and address to whom the notice is to be sent
by sending the other Party notice by first class and electronic mail.

8. COURT APPROVAL

 8.1 This Consent Judgment shall become effective on the Effective Date, provided
however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
Defendants shall support approval of such Motion.

1 8.2 If this Consent Judgment is not entered by the Court, it shall be of no force or
2 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
3 purpose.

4 **9. GOVERNING LAW AND CONSTRUCTION**

5 9.1 The terms of this Consent Judgment shall be governed by the laws of the State
6 of California.

7 **10. ENTIRE AGREEMENT**

8 10.1 This Consent Judgment contains the sole and entire agreement and
9 understanding of the Parties with respect to the entire subject matter hereof, and any and all prior
10 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
11 merged herein and therein. There are no warranties, representations, or other agreements between
12 the Parties except as expressly set forth herein. No representations, oral or otherwise, express or
13 implied, other than those specifically referred to in this Consent Judgment have been made by any
14 Party hereto. No other agreements not specifically contained or referenced herein, oral or
15 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
16 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
17 any of the Parties hereto only to the extent that they are expressly incorporated herein. No
18 supplementation, modification, waiver, or termination of this Consent Judgment shall be binding
19 unless executed in writing by the Party to be bound thereby. No waiver of any of the provisions
20 of this Consent Judgment shall be deemed or shall constitute a waiver of any of the other
21 provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

22 **11. RETENTION OF JURISDICTION**

23 11.1 This Court shall retain jurisdiction of this matter to implement or modify the
24 Consent Judgment.

25 **12. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

26 12.1 Each signatory to this Consent Judgment certifies that he or she is fully
27 authorized by the Party he or she represents to stipulate to this Consent Judgment and to enter into
28 and execute the Consent Judgment on behalf of the Party represented and legally to bind that

1 Party.

2 **13. NO EFFECT ON OTHER SETTLEMENTS**

3 13.1 Nothing in this Consent Judgment shall preclude CEH from resolving any
4 claim against another entity on terms that are different than those contained in this Consent
5 Judgment.

6 **14. EXECUTION IN COUNTERPARTS**

7 14.1 The stipulations to this Consent Judgment may be executed in counterparts
8 and by means of facsimile, which taken together shall be deemed to constitute one document.

9

10 **IT IS SO STIPULATED:**

11 Dated: May 21, 2015

CENTER FOR ENVIRONMENTAL HEALTH

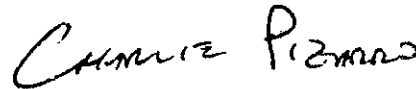
12



Signature

13

14

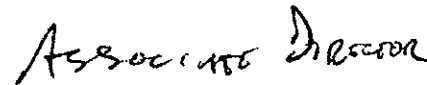


Printed Name

15

16

17



Title

18

19

20

21

22

23

24

25

26

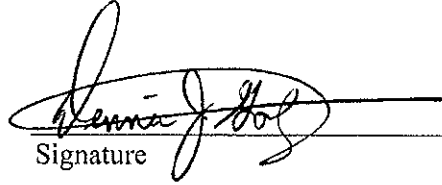
27

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

Dated: May 20, 2015

SHOCK DOCTOR, INC.


Signature

DENNIS J. GOETZ
Printed Name

CFO
Title

**IT IS SO ORDERED, ADJUDGED,
AND DECREED**

Dated: JUL 15 2015

GEORGE C. HERNANDEZ, JR.
JUDGE OF THE SUPERIOR COURT OF THE
STATE OF CALIFORNIA