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CENTER FOR ENVIRONMENTAL HEALTH
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9 SUPERIOR COURT OF THE STATE OF CALIFORNIA
10 COUNTY OF SAN FRANCISCO
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12 CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,
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14 Plaintiff,
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16 v.
ANSELL HEALTHCARE PRODUCTS,
17 INC., and Defendant DOES 1 through 200,
inclusive,
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19 Defendants.
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Case No. CGC-08-473477

**[PROPOSED] CONSENT JUDGMENT
RE: ANNIE INTERNATIONAL, INC.**

1 **1. INTRODUCTION**

2 **1.1** On March 19, 2008, plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint titled *Center for*
4 *Environmental Health v. Ansell Healthcare Products, Inc., et al.*, San Francisco County Superior
5 Court Case Number CGC-08-473477 (the “CEH Action”), for civil penalties and injunctive relief
6 pursuant to the provisions of Cal. Health & Safety Code §25249.5 et seq. (“Proposition 65”). On
7 August 29, 2008, CEH amended the complaint to name Annie International Inc. (“Defendant”) as
8 a defendant. CEH and Defendant are collectively referred to as the “Parties.”

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

12 **1.3** Beginning on or about June 5, 2008, CEH served Defendant and the
13 appropriate public enforcement agencies with the requisite 60-day notice (the “Notice”) alleging
14 that Defendant was in violation of Proposition 65. CEH’s Notice and the Complaint in this
15 Action allege that Defendant exposes people who use or otherwise handle the Products to di(2-
16 ethylhexyl) phthalate (“DEHP”), a chemical known to the State of California to cause cancer,
17 birth defects and other reproductive harm, without first providing clear and reasonable warning to
18 such 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 warning
20 provision of Proposition 65. Defendant disputes such allegations and asserts that all of its
21 products are safe and comply with all applicable laws.

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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
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1 Judgment as a full and final resolution of all claims that 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 allegation of fact or conclusions of law. It is the
6 Parties' intent that nothing in this Consent Judgment shall be construed as an admission by the
7 Parties of any fact, conclusion of law, issue of law or violation of law, nor shall compliance with
8 the 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.
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14 **2. COMPLIANCE - REFORMULATION**

15 **2.1 Reformulation Standard -- Removal of DEHP.** Beginning 60 days after
16 entry of this Consent Judgment (the "Compliance Date"), Defendant shall not manufacture,
17 distribute, ship, or sell, or cause to be manufactured, distributed or sold, to California consumers
18 any Product that contains in excess of trace amounts of DEHP. For purposes of this Consent
19 Judgment only, "in excess of trace amounts" is more than 600 parts per million ("ppm"). In
20 reformulating the Products to remove DEHP, Defendant may not use butyl benzyl phthalate
21 ("BBP"), di-n-hexyl phthalate ("DnHP"), di-n-butyl phthalate ("DBP") or di-isodecyl phthalate
22 ("DIDP") in excess of trace amounts. DEHP, BBP, DnHP, DBP and DIDP are together referred to
23 herein as "Listed Phthalates."
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25 **2.2 Certification from suppliers.** For so long as Defendant manufactures,
26 distributes, or ships the Products for sale to California consumers, Defendant shall issue
27 specifications to its suppliers requiring that the Products shall not contain DEHP or any other
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1 Listed Phthalate in excess of trace amounts. Defendant shall obtain written certification from its
2 suppliers of the Products certifying that the Products do not contain DEHP.

3 **2.3 Defendant’s Testing.** In order to ensure compliance with the requirements
4 of Section 2.1, Defendant shall cause to be conducted testing to confirm that Products shipped for
5 sale to California consumers do not contain in excess of trace amounts of DEHP or any other
6 Listed Phthalate. Testing shall be conducted in compliance with Section 2.1. All testing pursuant
7 to this section shall be performed by an independent laboratory in accordance with any of the
8 following test protocols: (1) EPA SW8270C, SW 3550C, or SW3580A (referred to as the “Test
9 Protocols”). At the written request of CEH, the results of the testing performed pursuant to this
10 section shall be made available to CEH on a confidential basis.
11

12 **2.3.1 Testing Frequency.** For the first order of Products purchased from
13 each of Defendant’s suppliers after the Compliance Date, Defendant shall randomly select and
14 test three (3) total Products purchased from each supplier of the Products intended for sale in
15 California. Following the testing of the first order as described above, Defendant shall, for each
16 subsequent order, randomly select and test one (1) of the total Products purchased in that calendar
17 year for sale in California from each supplier of the Products. Should Defendant stop selling or
18 causing to be sold Products in California, the testing requirements of Section 2.3 shall cease to
19 apply. However, should Defendant begin such sales again, Defendant shall begin testing again,
20 and shall apply the testing frequency set forth in 2.3.1 as though the first shipment following
21 Defendant’s re-initiation of Product sales were the first one following the Compliance Date.
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23 **2.3.2 Products That Contain Listed Phthalates Pursuant to**
24 **Defendant’s Testing.** If the results of the testing required pursuant to Section 2.3 show Listed
25 Phthalates in excess of trace amounts in a Product, Defendant shall: (1) refuse to accept all of the
26 Products that were purchased under the particular purchase order and were intended for sale in
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1 California; and (2) send a notice to the supplier explaining that such Products do not comply with
2 either Defendant's specifications for Listed Phthalates or the suppliers' certification; and (3)
3 apply the testing frequency set forth in 2.3.1 as though the next shipment from the supplier were
4 the first one following the Compliance Date.

5
6 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct
7 confirmatory testing of the Products. Any such testing shall be conducted by CEH at an
8 independent laboratory, in accordance with the Test Protocols. In the event that CEH's testing
9 demonstrates that the Products shipped by Defendant subsequent to the Compliance Date contain
10 Listed Phthalates in excess of trace amounts, CEH shall inform Defendant of the test results,
11 including information sufficient to permit Defendant to identify the Product(s). Defendant shall,
12 within 30 days following such notice, provide CEH, at the address listed in Section 11, with the
13 certification and testing information demonstrating its compliance with Sections 2.2 and 2.3 of
14 this Consent Judgment. If Defendant fails to provide CEH with information demonstrating that it
15 complied with Sections 2.2 and/or 2.3 or otherwise fails to identify an error in CEH's test results,
16 which error caused CEH erroneously to conclude a Product did not comply with this Consent
17 Judgment, Defendant shall be liable for stipulated payments in lieu of penalties for Products for
18 which CEH produces tests demonstrating the presence of Listed Phthalates in the Products. The
19 payments shall be made to CEH and used for the purposes described in Section 3.1. If Defendant
20 provides certification and testing information demonstrating its compliance with Sections 2.1, 2.2
21 and 2.3, Defendant shall not be liable for any such stipulated payments.

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24 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments
25 in lieu of penalties are warranted under section 2.4, the stipulated payment amount shall be as
26 follows for each Occurrence of Defendant selling a Product containing Listed Phthalates after the
27 Compliance Date:
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1 First Occurrence: \$500

2 Second Occurrence: \$750

3 Third Occurrence: \$1,000

4 Thereafter: \$2,500

5 CEH shall have the burden of proving noncompliance by a preponderance of the evidence.

6 As used in this section 2.4.1, an "Occurrence" is the sale of any number of Products from
7 the same lot containing Listed Phthalates.

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9 **2.5 Products in the Stream of Commerce.** Defendant's Products that have
10 been manufactured, distributed, shipped, sold, or that are otherwise in the stream of commerce
11 prior to the Compliance Date shall be released from any claims that were brought or that could be
12 brought by CEH in the Complaint, as though they were Covered Claims within the meaning of
13 Section 7.1, below. As a result, the stipulated payments and other obligations of this Section 2 do
14 not apply to these Products.
15

16 **3. SETTLEMENT PAYMENTS**

17 **3.1 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
18 \$5,000 in lieu of any penalty pursuant to Health and Safety Code §25249.7(b). CEH shall use
19 such funds to continue its work protecting people from exposures to toxic chemicals. As part of
20 this work, CEH intends to conduct periodic testing of the Products as set forth in section 2.1.3.
21 The payment required under this section shall be made payable to CEH.
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23 **3.2 Attorneys' Fees and Costs.** Defendant shall pay \$10,000 to reimburse
24 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
25 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,
26 litigating and negotiating a settlement in the public interest. The payment required under this
27 section shall be made payable to Lexington Law Group, LLP.
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1 **3.3 Delivery of Payments.** All payments made pursuant to this Section 3 shall
2 be delivered to the Lexington Law Group, LLP at the address set forth in Section 11.1 and shall
3 be delivered within 15 days of entry of this Consent Judgment.

4 **4. MODIFICATION OF CONSENT JUDGMENT**

5 **4.1** This Consent Judgment may be modified by written agreement of CEH and
6 Defendant, or upon motion of CEH or Defendant as provided by law.

7 **4.2** In the event that CEH in a subsequent Proposition 65 action shall define “in
8 excess of trace amounts” of Listed Phthalates (or any Phthalate identified as a Listed Phthalate in
9 this Consent Judgment) to be a figure higher than 600 ppm, then Defendant may seek
10 modification of this Consent Judgment upon a duly noticed motion and hearing to substitute such
11 higher figure for the 600 ppm reformulation standard in Section 2.1 and CEH shall not oppose
12 such motion.
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14 **5. ENFORCEMENT OF CONSENT JUDGMENT**

15 **5.1** Either party may, by motion or application for an order to show cause,
16 enforce the terms and conditions contained in this Consent Judgment. The prevailing party on
17 any such motion shall be entitled to recover its reasonable attorneys’ fees and costs associated
18 with enforcing the Consent Judgment.
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20 **6. APPLICATION OF CONSENT JUDGMENT**

21 **6.1** This Consent Judgment shall apply to and be binding upon the
22 Parties hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any
23 of them.
24

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

26 **7.1** This Consent Judgment is a full, final and binding resolution between
27 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in the
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1 Complaint against Defendant (including any claims that could be asserted in connection with any
2 of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates, directors,
3 officers, employees, agents, attorneys, distributors, or customers (collectively, “Defendant
4 Releasees”) based on failure to warn about alleged exposures to DEHP or any Listed Phthalate
5 resulting from any Products manufactured, distributed or sold by Defendant (“Covered Claims”)
6 on or prior to the date of entry of this Consent Judgment. CEH, its directors, officers, employees
7 and attorneys hereby release all Covered Claims against Defendant Releasees. Compliance with
8 the terms of this Consent Judgment constitutes compliance with Proposition 65 for purposes of
9 exposures to Listed Phthalates from the Products.
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11 **8. SEVERABILITY**

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

17 **9.1** The terms of this Consent Judgment shall be governed by the laws of
18 the State of California.
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20 **10. RETENTION OF JURISDICTION**

21 **10.1** This Court shall retain jurisdiction of this matter to implement and
22 enforce the terms this Consent Judgment.

23 **11. PROVISION OF NOTICE**

24 **11.1** All notices required pursuant to this Consent Judgment and
25 correspondence shall be sent to the following:
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1 For CEH:

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

6 For Defendant:

7 Ruth Ann E. Castro
8 Farella, Braun + Martel
9 235 Montgomery Street, 17th floor
10 San Francisco, California 94104

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

CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro, Assistant Director
Center for Environmental Health

Dated: 2/18/09

ANNIE INTERNATIONAL, INC.

Dated: _____

Kevin Shinn

President and CEO

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

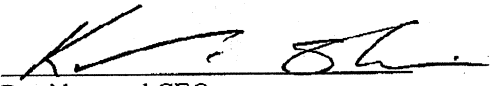
Dated: _____

Charlie Pizarro, Assistant Director
Center for Environmental Health

ANNIE INTERNATIONAL, INC.

Dated: 2-13-09

Kevin Shinn



President and CEO

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ORDER AND JUDGMENT

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

Dated: _____

Judge, Superior Court of the State of California

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