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6 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,)

13 Plaintiff,)

14 v.)

15 ACME UNITED CORPORATION; ADENNA)
16 INC.; BECTON, DICKINSON & COMPANY;)
BETTY DAIN CREATIONS, INC.;)
17 DURASAFE INC.; IMPACT PRODUCTS,)
LLC; INVACARE CORPORATION;)
18 MICROFLEX CORPORATION; SHELBY)
GROUP INTERNATIONAL DBA MCR)
19 SAFETY; UNITED STATIONERS SUPPLY)
CO.; and Defendant DOES 1 through 200,)
20 inclusive,)

21 Defendants.)
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Case No.: CGC-08-482792

**[PROPOSED] CONSENT JUDGMENT
RE: DURASAFE INC.**

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2 **1. INTRODUCTION**

3 **1.1** On December 9, 2008, Plaintiff the Center for Environmental Health
4 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint entitled *Center*
5 *for Environmental Health v. Acme United Corporation, et al.*, San Francisco County Superior
6 Court Case Number CGC-08-482792 (the “CEH Action”), for civil penalties and injunctive
7 relief pursuant to the provisions of Cal. Health & Safety Code § 25249.5, *et seq.* (“Proposition
8 65”). The Complaint in the CEH Action named Durasafe Inc. (“Defendant” or “Durasafe”) as a
9 defendant. CEH and Durasafe are referred to herein individually as a “Party” and collectively
10 as the “Parties.”

11 **1.2** Durasafe is a corporation that employs 10 or more persons and
12 manufactured, distributed and/or sold vinyl gloves (the “Products”).

13 **1.3** On or about August 26, 2008, CEH served Durasafe and the appropriate
14 public enforcement agencies with the requisite 60-day Notice (the “Notice”) alleging that
15 Durasafe was in violation of Proposition 65. CEH’s Notice and the Complaint in the CEH
16 Action allege that Durasafe exposes people who use or otherwise handle the Products to di(2-
17 ethylhexyl) phthalate (“DEHP”), a chemical known to the State of California to cause cancer,
18 birth defects and other reproductive harm, without first providing clear and reasonable warning
19 to such persons regarding the carcinogenicity and reproductive toxicity of DEHP. The Notice
20 and Complaint allege that Durasafe’s conduct violates Health & Safety Code § 25249.6, the
21 warning provision of Proposition 65. Durasafe disputes such allegations and asserts that all of
22 its products are safe and comply with all applicable laws.

23 **1.4** For purposes of this Consent Judgment only, the Parties stipulate that this
24 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and
25 personal jurisdiction over Durasafe as to the acts alleged in CEH’s Complaint, that venue is
26 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent
27 Judgment as a full and final resolution of all claims which were or could have been raised in the
28 Complaint based on the facts alleged therein.

1 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
2 certain disputed claims between the Parties as alleged in the Complaint. By executing this
3 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'
4 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
5 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
6 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
7 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
8 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this
9 or any other or future legal proceedings.

10 **2. COMPLIANCE - REFORMULATION**

11 **2.1 Reformulation Standard – Removal of DEHP.** After sixty (60) days
12 following the entry of this Consent Judgment (the "Compliance Date"), and except as provided
13 in Section 2.1.1, below, Durasafe shall not manufacture, distribute, ship, or sell, or cause to be
14 manufactured, distributed or sold, any Product that contains in excess of trace amounts of DEHP.
15 For purposes of this Consent Judgment only, "in excess of trace amounts" is more than 600 parts
16 per million ("ppm"). In reformulating the Products to remove DEHP, Durasafe may not use
17 butyl benzyl phthalate ("BBP"), di-n-hexyl phthalate ("DnHP"), di-n-butyl phthalate ("DBP") or
18 di-isodecyl phthalate ("DIDP") in excess of trace amounts. DEHP, BBP, DnHP, DBP and DIDP
19 are together referred to herein as "Listed Phthalates."

20 **2.1.1 Non-Consumer Use of Products.** For a period of one hundred
21 twenty days following the entry of this Consent Judgment, the requirements of Section 2.1 shall
22 not apply to Products that are in Durasafe's inventory before the Compliance Date and that are
23 intended by Durasafe for use only in occupational settings. Following this one hundred twenty-
24 day period, the requirements of Section 2.1 shall fully apply to such Products.

25 **2.2 Certification From Suppliers.** Durasafe shall issue specifications to its
26 suppliers requiring that the Products shall not contain DEHP or any other Listed Phthalate in
27 excess of trace amounts. Durasafe shall obtain written certification from its suppliers of the
28 Products certifying that the Products do not contain DEHP in excess of trace amounts.

1 **2.3 Defendant's Testing.** In order to ensure compliance with the
2 requirements of Section 2.1, Durasafe shall cause to be conducted testing to confirm that
3 Products sold do not contain any Listed Phthalate in excess of trace amounts. Testing shall be
4 conducted in compliance with Section 2.1. All testing pursuant to this Section shall be
5 performed by an independent laboratory in accordance with one of the following test protocols:
6 (1) EPA SW8270C and EPA SW3580A or (2) ASTM D3421-75 (referred to as the "Test
7 Protocols"). At the request of CEH, the results of the testing performed pursuant to this section
8 shall be made available to CEH on a confidential basis.

9 **2.3.1 Testing Frequency.** For each of the first two orders of Products
10 purchased from each of Durasafe's suppliers after the Compliance Date, Durasafe shall randomly
11 select and test one glove from each of the greater of 0.1% (one-tenth of one percent) or eight, but
12 in no case more than ten, of the total boxes of Products purchased from each supplier of the
13 Products intended for sale . Following the testing of the first two orders as described above,
14 Durasafe shall, for each subsequent order, randomly select and test one glove from each of the
15 greater of 0.05% (one-twentieth of one percent) or four, but in no case more than five, of the total
16 boxes of Products purchased in that calendar year for sale from each supplier of the Products.

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

24 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory
25 testing of the Products. Any such testing shall be conducted by CEH at an independent
26 laboratory, in accordance with either of the Test Protocols. In the event that CEH's testing
27 under either of the Testing Protocols demonstrates that the Products contain Listed Phthalates in
28 excess of trace amounts subsequent to the Compliance Date, CEH shall inform Durasafe in a

1 reasonably prompt manner of the test results, including information sufficient to permit
2 Durasafe to identify the Product(s). Durasafe shall, within 30 days following such notice,
3 provide CEH, at the address listed in Section 11.1, with the certification and testing information
4 demonstrating its compliance with Sections 2.2 and 2.3 of this Consent Judgment. If Durasafe
5 fails to provide CEH with information demonstrating that it complied with Sections 2.2 and/or
6 2.3, Durasafe shall be liable for stipulated payments in lieu of penalties for Products for which
7 CEH produces tests demonstrating the presence of Listed Phthalates in excess of trace amounts
8 in the Products. The payments shall be made to CEH and used for the purposes described in
9 Section 3.1.

10 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated
11 payments in lieu of penalties are warranted under Section 2.4, the stipulated payment amount
12 shall be as follows for each Occurrence of Durasafe selling a Product containing Listed Phthalates
13 in excess of trace amounts after the Compliance Date:

14	First Occurrence:	\$500
15	Second Occurrence:	\$750
16	Third Occurrence:	\$1,000
17	Thereafter:	\$2,500

18 In the event that Durasafe provides information, in accordance with Section 2.4, that it believes
19 demonstrates its compliance with Sections 2.2 and 2.3 of the Consent Judgment, and CEH disputes
20 such a claim, CEH shall have the burden of demonstrating that stipulated penalties are warranted by
21 proving noncompliance with Sections 2.2 and 2.3 by a preponderance of the evidence. As used in
22 this Section 2.4.1, the sale of any number of Products from a single lot shall constitute an
23 "Occurrence," provided however that if Products from more than one lot are tested, or are collected
24 for testing, by or on behalf of CEH under Section 2.4 during the same Testing Period and are
25 subject to stipulated penalties in this Section 2.4.1, all of those Products shall fall within a single
26 Occurrence. As used this Section 2.4.1, a Testing Period refers to a period of 60 days or less.

1 **3. SETTLEMENT PAYMENTS**

2 **3.1 Monetary Payment in Lieu of Penalty.** Durasafe shall pay to CEH
3 \$12,500 in lieu of any penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall use
4 such funds to continue its work protecting people from exposures to toxic chemicals. As part of
5 this work, CEH intends to conduct periodic testing of the Products as set forth in Section 2.4.
6 The payment required under this Section shall be made payable to CEH.

7 **3.2 Attorneys' Fees and Costs.** Durasafe shall pay \$25,000 to reimburse
8 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
9 other costs incurred as a result of investigating, bringing this matter to Durasafe's attention,
10 litigating and negotiating a settlement in the public interest. The payment required under this
11 Section shall be made payable to Lexington Law Group, LLP.

12 **3.3 Delivery of payments.** All payments made pursuant to this Section 3
13 shall be delivered to the Lexington Law Group, LLP at the address set forth in Section 11.1 and
14 shall be delivered within 10 days of entry of this Consent Judgment.

15 **4. MODIFICATION OF CONSENT JUDGMENT**

16 **4.1** This Consent Judgment may be modified by written agreement of CEH
17 and Durasafe, or upon motion of CEH or Durasafe as provided by law. Grounds for such
18 modification include, but are not limited to, any change in law that would (1) render Proposition
19 65 inapplicable to the Products or to DEHP or (2) establish a compliance standard that would
20 allow concentrations of DEHP and/or any Listed Phthalate in the Products to exceed 600 ppm
21 without a Proposition 65 warning.

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. Should CEH prevail on any such
25 motion, it shall be entitled to recover its reasonable attorneys' fees and costs associated with
26 enforcing the Consent Judgment.

1 **6. APPLICATION OF CONSENT JUDGMENT**

2 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
3 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
4 them.

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

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

1 **11. PROVISION OF NOTICE**

2 **11.1** All notices required pursuant to this Consent Judgment and
3 correspondence shall be sent to the following:

4 For CEH:

5 Mark N. Todzo
6 Lexington Law Group, LLP
7 1627 Irving Street
8 San Francisco, CA 94122

9 For Defendant:

10 Trenton H. Norris
11 Arnold & Porter LLP
12 275 Battery Street, Suite 2700
13 San Francisco, CA 94105

14 **12. COURT APPROVAL**

15 **12.1** CEH will comply with the settlement notice provisions of Health and
16 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003. If this
17 Consent Judgment is not approved by the Court, it shall be of no force or effect.

18 **13. EXECUTION AND COUNTERPARTS**

19 **13.1** The stipulations to this Consent Judgment may be executed in
20 counterparts and by means of facsimile, which taken together shall be deemed to constitute one
21 document.

22 **14. AUTHORIZATION**

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

1 **AGREED TO:**

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3 **CENTER FOR ENVIRONMENTAL HEALTH**

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6 _____
Michael Green, Executive Director

Dated: 7/22/09

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8 **DURASAFE INC.**

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Dated: _____

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[Name]

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Michael Green, Executive Director

Dated: _____

DURASAFE INC.

Nicholas Hung

Dated: 7-20-2009

NICHOLAS HUNG
[Name]

PRESIDENT
[Title]

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Durasafe 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