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

21
22 Defendants.

Case No. CGC-08-482792

**[PROPOSED] CONSENT JUDGMENT
RE: BECTON, DICKINSON AND
COMPANY**

1 **1. INTRODUCTION**

2 **1.1** On December 9, 2008, plaintiff the Center for Environmental Health
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint
4 (“Complaint”) titled *Center for Environmental Health v. Acme United Corporation, et al.*,
5 San Francisco County Superior Court Case Number CGC-08-482792 (the “Action”), for civil
6 penalties and injunctive relief pursuant to the provisions of Cal. Health & Safety Code §
7 25249.5, *et seq.* (“Proposition 65”). Becton, Dickinson and Company (“Defendant” or “BD”)
8 is named as a defendant in the Action. CEH and BD are collectively referred to herein as the
9 “Parties,” with each of them as a “Party.”

10 **1.2** BD is a corporation that employs 10 or more persons and
11 manufactured, distributed and/or sold vinyl gloves in the State of California. As used in this
12 Consent Judgment, “Products” refers to vinyl gloves manufactured, distributed and/or sold by
13 BD.

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

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

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

12 **2. COMPLIANCE - REFORMULATION**

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

22 **2.2 Certification from Suppliers.** BD shall issue specifications to its
23 suppliers of Products subject to Section 2.1, if any, requiring that such Products shall not
24 contain DEHP or any other Listed Phthalate in excess of trace amounts. BD shall obtain
25 written certification from its suppliers of the Products certifying that the Products do not
26 contain DEHP in excess of trace amounts.

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

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

7 **2.3.1 Testing Frequency.** For each of the first two orders of
8 Products purchased from each of BD's suppliers after the Compliance Date, BD shall randomly
9 select and test one glove from each of the greater of 0.1% (one-tenth of one percent) or eight,
10 but in no case more than ten, of the total boxes of Products purchased from each supplier of the
11 Products intended for sale. Following the testing of the first two orders as described above, BD
12 shall, for each subsequent order, randomly select and test one glove from each of the greater of
13 0.05% (one-twentieth of one percent) or four, but in no case more than five, of the total boxes
14 of Products purchased in that calendar year for sale from each supplier of the Products.

15 **2.3.2 Products That Contain Listed Phthalates Pursuant to BD's**
16 **Testing.** If the results of the testing required pursuant to Section 2.3 show Listed Phthalates in
17 excess of trace amounts in a Product, BD shall: (1) refuse to accept all of the Products that were
18 purchased under the particular purchase order; (2) send a notice to the supplier explaining that
19 such Products do not comply with the suppliers' certification; and (3) apply the testing
20 frequency set forth in Section 2.3.1 as though the next shipment from the supplier were the first
21 one following the Compliance Date.

22 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct
23 confirmatory testing of the Products subject to Section 2.1, if any, at its own expense. Any
24 such testing shall be conducted by CEH at an independent laboratory, in accordance with both
25 of the Test Protocols. In the event that CEH's testing demonstrates that the Products contain
26 Listed Phthalates in excess of trace amounts subsequent to the Compliance Date, CEH shall
27 inform BD of the test results, including information sufficient to permit BD to identify the
28 Product(s). BD shall, within 30 days following such notice, provide CEH, at the address

1 listed in Section 11.1, with the certification and testing information demonstrating its
2 compliance with Sections 2.2 and 2.3 of this Consent Judgment. If and only if BD fails to
3 provide CEH with information demonstrating that it complied with Sections 2.2 and/or 2.3, as
4 applicable, BD shall be liable for stipulated payments in lieu of penalties for Products for
5 which CEH produces tests demonstrating the presence of Listed Phthalates in excess of trace
6 amounts in the Products. The payments shall be made to CEH and used for the purposes
7 described in Section 3.1.

8 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated
9 payments in lieu of penalties are warranted under Section 2.4, the stipulated payment amount
10 shall be as follows for each Occurrence of BD selling a Product containing Listed Phthalates in
11 excess of trace amounts after the Compliance Date:

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

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

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1 **2.5 Products in the Stream of Commerce.** Any Products that have been
2 manufactured, distributed, shipped, or sold, or that are otherwise in the stream of commerce prior
3 to the Compliance Date shall be released from any claims that were brought or that could be
4 brought by CEH in the Complaint, as though they were Covered Claims within the meaning of
5 Section 7.1, below. As a result, the obligations of this Section 2 do not apply to such Products.

6 **3. SETTLEMENT PAYMENTS**

7 **3.1 Penalty.** BD shall pay to CEH \$1,000 as a civil penalty pursuant to
8 health and Safety Code §25249.7(b), which CEH will apportion pursuant to Health and Safety
9 Code §25249.12.

10 **3.2 Monetary Payment in Lieu of Penalty.** BD shall pay to CEH \$8,500
11 in lieu of any additional penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall
12 use such funds to continue its work protecting people from exposures to toxic chemicals. As
13 part of this work, CEH intends to conduct periodic testing of the Products as set forth in
14 Section 2.4. The payment required under this section shall be made payable to CEH.

15 **3.3 Attorneys' Fees and Costs.** BD shall pay \$18,000 to reimburse CEH
16 and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
17 other costs incurred as a result of investigating, bringing this matter to BD's attention,
18 litigating and negotiating a settlement in the public interest. The payment required under this
19 section shall be made payable to Lexington Law Group, LLP.

20 **3.4 Delivery of Payments.** The payments required under this Section 3
21 shall be delivered to the Lexington Law Group, LLP at the address set forth in Section 11.1
22 within 10 days of entry of this Consent Judgment.

23 **4. MODIFICATION OF CONSENT JUDGMENT**

24 **4.1** This Consent Judgment may be modified by written agreement of CEH
25 and BD, or upon motion of CEH or BD as provided by law. Grounds for such modification
26 include, but are not limited to, any change in law that would (1) render Proposition 65
27 inapplicable to the Products or to DEHP or (2) establish a compliance standard that would
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1 allow concentrations of DEHP and/or any Listed Phthalate in the Products to exceed 600 ppm
2 without a Proposition 65 warning.

3 **5. ENFORCEMENT OF CONSENT JUDGMENT**

4 **5.1** CEH may, by motion or application for an order to show cause, enforce
5 the terms and conditions contained in this Consent Judgment. Should CEH prevail on any
6 such motion, it shall be entitled to recover its reasonable attorneys' fees and costs associated
7 with enforcing the Consent Judgment.

8 **6. APPLICATION OF CONSENT JUDGMENT**

9 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
10 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
11 them.

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

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

25 **8. SEVERABILITY**

26 **8.1** In the event that any of the provisions of this Consent Judgment are
27 held by a court to be unenforceable, the validity of the enforceable provisions shall not be
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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 BD:

Trenton H. Norris
Sarah Esmali
Arnold & Porter, LLP
275 Battery Street, Suite 2700
San Francisco, CA 94111-3823

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. If this Consent Judgment is not approved by the Court, it shall be of no further force or effect.

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, Director
Center for Environmental Health

Dated: 10/5/07

BECTON, DICKINSON AND COMPANY

[Name]

[Title]

Dated: _____

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Michael Green, Director
Center for Environmental Health

Dated: _____

BECTON, DICKINSON AND COMPANY



Dated: Sept 29th 2009

Eric Borin

[Name]

V.P., U.S. Sales & Marketing

[Title]

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Becton, Dickinson and Company, 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