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6 CENTER FOR ENVIRONMENTAL HEALTH

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

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11  
12 CENTER FOR ENVIRONMENTAL HEALTH, )

Case No. CGC-09-494337

13 Plaintiff, )

14 v. )

**[PROPOSED] CONSENT JUDGMENT  
RE: BASIC INTERNATIONAL, INC.  
DBA BASIC MEDICAL INDUSTRIES,  
INC.**

15 BASIC INTERNATIONAL, INC. DBA BASIC )  
16 MEDICAL INDUSTRIES, INC.; DASH )  
MEDICAL GLOVES, INC.; and Defendant )  
17 DOES 1 through 200, inclusive, )

18 Defendants. )  
19 \_\_\_\_\_ )

1           **1. INTRODUCTION**

2           **1.1**     On November 10, 2009, plaintiff the Center for Environmental Health  
3 (“CEH”), a non-profit corporation acting in the public interest, filed a complaint entitled *Center*  
4 *for Environmental Health v. Basic International, Inc., et al.*, San Francisco County Superior  
5 Court Case Number CGC-09-494337 (the “Complaint”), for civil penalties and injunctive relief  
6 pursuant to the provisions of Cal. Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”).  
7 The Complaint names Basic International, Inc. dba Basic Medical Industries, Inc. (“Defendant”)  
8 as a defendant.

9           **1.2**     Defendant is a corporation that, at times during the relevant period has  
10 employed 10 or more persons and manufactured, distributed and/or sold vinyl gloves (the  
11 “Products”) in the State of California.

12           **1.3**     On or about June 4, 2009, CEH served Defendant and the appropriate  
13 public enforcement agencies with the requisite 60-day Notice (the “Notice”) alleging that  
14 Defendant was in violation of Proposition 65 due to use and/or handling of the Products by  
15 California consumers. CEH’s Notice and the Complaint in the CEH Action allege that  
16 Defendant exposes people who use or otherwise handle the Products to di(2-ethylhexyl) phthalate  
17 (“DEHP”), a chemical known to the State of California to cause cancer, birth defects and other  
18 reproductive harm, without first providing clear and reasonable warning to such persons  
19 regarding the carcinogenicity and reproductive toxicity of DEHP. The Notice and Complaint  
20 allege that Defendant’s conduct violates Health & Safety Code § 25249.6, the warning provision  
21 of Proposition 65. Upon receipt of CEH’s Notice, Defendant immediately investigated the non-  
22 exclusive exemplar Product identified in the Notice and shortly after halted sales of the non-  
23 exclusive exemplar to California customers while its investigation continued. Defendant  
24 disputes such allegations and asserts that all of its Products are safe and comply with all  
25 applicable laws.

26           **1.4**     For purposes of this Consent Judgment only, the parties stipulate that this  
27 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and  
28 personal jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue is

1 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent  
2 Judgment as a full and final resolution of all claims which were or could have been raised in the  
3 Complaint based on the facts alleged therein.

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

13           **2.       COMPLIANCE - REFORMULATION**

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

23           **2.2       Certification From Suppliers.** For so long as Defendant manufactures,  
24 distributes, ships, or sells the Products for sale to California consumers, Defendant shall issue  
25 specifications to its suppliers requiring that the Products shall not contain DEHP or any other  
26 Listed Phthalate in excess of trace amounts. Defendant shall obtain written certification from its  
27 suppliers of the Products certifying that the Products do not contain DEHP or any other Listed  
28 Phthalate in excess of trace amounts.

1                   **2.3 Defendant’s Testing.** In order to ensure compliance with the  
2 requirements of Section 2.1, Defendant shall cause to be conducted testing to confirm that  
3 Products shipped for sale to California consumers do not contain in excess of trace amounts of  
4 any Listed Phthalate. Testing shall be conducted in compliance with Section 2.1. All testing  
5 pursuant to this section shall be performed by an independent laboratory in accordance with both  
6 of the following test protocols: (1) EPA SW8270C; and (2) EPA SW3580A (together referred to  
7 as the “Test Protocols”). At the written request of CEH, the results of the testing performed  
8 pursuant to this section 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 Defendant’s suppliers after the Compliance Date, Defendant shall  
11 randomly select and test the greater of 0.1% (one-tenth of one percent) or eight, but in no case  
12 more than ten, of the total Products purchased from each supplier of the Products intended for  
13 sale in California. Following the testing of the first two orders as described above, Defendant  
14 shall, for each subsequent order, randomly select and test the greater of 0.05% (one-twentieth of  
15 one percent) or four, but in no case more than five, of the total Products purchased in that  
16 calendar year for sale in California from each supplier of the Products. Should Defendant stop  
17 selling or causing to be sold Products in California, the testing requirements of Section 2.3 shall  
18 cease to apply. However, should Defendant begin such sales again, Defendant shall begin testing  
19 again, and shall apply the testing frequency set forth in Section 2.3.1 as though the first shipment  
20 following Defendant’s re-initiation of Product sales were the first one following the Compliance  
21 Date.

22                   **2.3.2 Products That Contain Listed Phthalates Pursuant to**  
23 **Defendant’s Testing.** If the results of the testing required pursuant to Section 2.3 show any  
24 Listed Phthalate in excess of trace amounts in a Product, Defendant shall: (1) refuse to accept all  
25 of the Products that were purchased under the particular purchase order; (2) send a notice to the  
26 supplier explaining that such Products do not comply with either Defendant’s specifications for  
27 Listed Phthalates or the suppliers’ certification; and (3) apply the testing frequency set forth in  
28 Section 2.3.1 as though the next shipment from the supplier were the first one following the

1 Compliance Date.

2                   **2.4 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory  
3 testing of the Products. Any such testing shall be conducted by CEH at an independent  
4 laboratory, in accordance with both of the Test Protocols. In the event that CEH's testing  
5 demonstrates that the Products shipped by Defendant subsequent to the Compliance Date contain  
6 Listed Phthalates in excess of trace amounts, CEH shall inform Defendant of the test results,  
7 including information sufficient to permit Defendant to identify the Product(s). Defendant shall,  
8 within 30 days following such notice, provide CEH, at the address listed in Section 11.1, with the  
9 certification and testing information demonstrating its compliance with Sections 2.2 and 2.3 of  
10 this Consent Judgment. If Defendant fails to provide CEH with information demonstrating that it  
11 complied with Sections 2.2 and/or 2.3 or otherwise fails to identify an error in CEH's test results,  
12 which error caused CEH erroneously to conclude a Product did not comply with this Consent  
13 Judgment, Defendant shall be liable for stipulated payments in lieu of penalties for Products for  
14 which CEH produces tests demonstrating the presence of Listed Phthalates in the Products. The  
15 payments shall be made to CEH and used for the purposes described in Section 3.1.

16                   **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments  
17 in lieu of penalties are warranted under Section 2.4, the stipulated payment amount shall be as  
18 follows for each unit of Product for which CEH produces a test result showing that Defendant  
19 sold that Product containing Listed Phthalates after the Compliance Date:

20	First Occurrence:	\$500
21	Second Occurrence:	\$750
22	Third Occurrence:	\$1,000
23	Thereafter:	\$2,500

24                   **2.5 Products in the Stream of Commerce.** Defendant's Products that have  
25 been manufactured, distributed, shipped, sold, or that are otherwise in the stream of commerce  
26 prior to the Compliance Date shall be released from any claims that were brought or that could be  
27 brought by CEH in the Complaint, as though they were Covered Claims within the meaning of  
28 Section 7.1, below. As a result, the stipulated payments and other obligations of this Section 2

1 do not apply to these Products.

2 **3. SETTLEMENT PAYMENTS**

3 **3.1 Civil Penalty.** Defendant shall pay \$500 as a civil penalty pursuant to  
4 Health and Safety Code § 25249.7(b). The penalty shall be made payable to CEH, which will  
5 apportion the penalty in accordance with Health and Safety Code § 25249.12.

6 **3.2 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH  
7 \$3,000 in lieu of any additional penalty pursuant to Health and Safety Code § 25249.7(b). CEH  
8 shall use such funds to continue its work protecting people from exposures to toxic chemicals.  
9 As part of this work, CEH intends to conduct periodic testing of the Covered Products as set  
10 forth in Section 2.4. The payment required under this Section shall be made payable to CEH.

11 **3.3 Attorneys' Fees and Costs.** Defendant shall pay \$6,500 to reimburse  
12 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any  
13 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,  
14 litigating and negotiating a settlement in the public interest. The payment required under this  
15 Section shall be made payable to Lexington Law Group.

16 **3.4 Delivery of Payments.** All payments made pursuant to this Section 3  
17 shall be delivered to the Lexington Law Group at the address set forth in Section 11.1 and shall  
18 be delivered within 10 days of entry of the Consent Judgment.

19 **4. MODIFICATION OF CONSENT JUDGMENT**

20 **4.1** This Consent Judgment may be modified by written agreement of CEH  
21 and Defendant, or upon motion of CEH or Defendant as provided by law.

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. In the event CEH is successful in  
25 any such motion or application, CEH shall be entitled to recover its reasonable attorneys' fees  
26 and costs associated with enforcing the Consent Judgment.

27 **6. APPLICATION OF CONSENT JUDGMENT**

28 **6.1** This Consent Judgment shall apply to and be binding upon the Parties

1 hereto, their divisions, subdivisions, parents and subsidiaries, and the predecessors, successors or  
2 assigns of any of them.

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

4 **7.1** This Consent Judgment is a full, final and binding resolution between  
5 CEH, both on its own behalf and on behalf of the public interest pursuant to Health & Safety  
6 Code § 25249.7(d), and Defendant of any violation of Proposition 65 that was or could have been  
7 asserted in the Complaint against Defendant (including any claims that could be asserted in  
8 connection with any of the Products covered by this Consent Judgment) or its parents,  
9 subsidiaries, affiliates, directors, officers, employees, agents, attorneys, suppliers, distributors,  
10 customers or retailers (collectively, “Defendant Releasees”) based on failure to warn about  
11 alleged exposures to DEHP resulting from any Products manufactured, distributed or sold by  
12 Defendant (“Covered Claims”) on or prior to the date of entry of this Consent Judgment. CEH,  
13 its directors, officers, employees and attorneys, both on its own behalf and on behalf of the public  
14 interest pursuant to Health & Safety Code § 25249.7(d), hereby release all Covered Claims  
15 against Defendant Releasees. Compliance with the terms of this Consent Judgment constitutes  
16 compliance with Proposition 65 for purposes of DEHP exposures 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.

27 **11. PROVISION OF NOTICE**

28 **11.1** All notices required pursuant to this Consent Judgment and

1 correspondence shall be sent to the following:

2 For CEH:

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

6 For Defendant:

7 Douglas Frymer  
8 4981 Irwindale Ave, Suite 100  
9 Irwindale, CA 91706

10 **12. COURT APPROVAL**

11 **12.1** CEH will comply with the settlement notice provisions of Health and  
12 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

13 **13. EXECUTION AND COUNTERPARTS**

14 **13.1** The stipulations to this Consent Judgment may be executed in counterparts  
15 and by means of facsimile, which taken together shall be deemed to constitute one document.

16 **14. AUTHORIZATION**

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

23 **AGREED TO:**

24 **CENTER FOR ENVIRONMENTAL HEALTH**

25 

26 Dated: 9/15/10

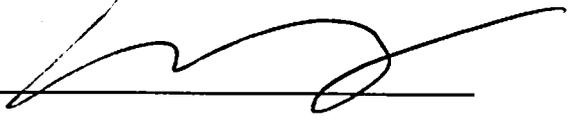
27 Charlie Pizarro, Assistant Director  
28 CENTER FOR ENVIRONMENTAL HEALTH

*ASSOCIATE*

1 **BASIC INTERNATIONAL, INC.**

2

3 [Name]



Dated: 9-10-10

4

C.O.O.

5 [Title]

6 **BASIC INTERNATIONAL, INC.**

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**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between CEH and Basic International, Inc., dba Basic Medical Industries, 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