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6 CENTER FOR ENVIRONMENTAL HEALTH

7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF SAN FRANCISCO
10

11
12 CENTER FOR ENVIRONMENTAL HEALTH,)
13 a non-profit corporation,)

14 Plaintiff,)

15 v.)

16)
17 ANSELL HEALTHCARE PRODUCTS, INC.,)
18 and Defendant DOES 1 through 200, inclusive,)

19 Defendants.)
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Case No. CGC-08-473477

**[PROPOSED] CONSENT JUDGMENT
RE: THE SAFETY ZONE LLC**

1 **1. INTRODUCTION**

2 **1.1** On March 19, 2008, plaintiff Center for Environmental Health (“CEH”), a
3 non-profit corporation acting in the public interest, filed a complaint entitled *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”).
7 Upon entry of this Consent Judgment, the CEH Action shall be amended to name The Safety
8 Zone LLC (“Defendant”) as a party.

9 **1.2** Defendant is a corporation that employs 10 or more persons and
10 manufactured, distributed and/or sold vinyl gloves (the “Covered Products”) in the State of
11 California.

12 **1.3** On or about June 5, 2008, and March 3, 2009, CEH served Sally Beauty
13 Holdings, Inc. and Sally Beauty Supply, LLC, respectively, and the appropriate public
14 enforcement agencies with the requisite 60-day Notices alleging that Sally Beauty Holdings, Inc.
15 and Sally Beauty Supply, LLC were in violation of Proposition 65 due, in part, to sales of
16 Defendant’s Products. On or about July 24, 2009, CEH served Defendant and the appropriate
17 public enforcement agencies with the requisite 60-day Notice alleging that Defendant was in
18 violation of Proposition 65. CEH’s Notices and the Complaint in the CEH Action allege that
19 Defendant exposes people who use or otherwise handle the Covered Products to di(2-ethylhexyl)
20 phthalate (“DEHP”), a chemical known to the State of California to cause cancer, birth defects
21 and other reproductive harm, without first providing clear and reasonable warning to such
22 persons regarding the carcinogenicity and reproductive toxicity of DEHP. The Notice and
23 Complaint allege that Defendant’s conduct violates Health & Safety Code § 25249.6, the
24 warning provision of Proposition 65. Defendant disputes such allegations and asserts that all of
25 its products are safe and comply with all applicable laws.

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

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

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

14 **2. COMPLIANCE - REFORMULATION**

15 **2.1 Reformulation Standard – Removal of DEHP.** After 60-days following
16 the 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, any Covered Product
18 that contains in excess of trace amounts of DEHP. For purposes of this Consent Judgment only,
19 "in excess of trace amounts" is more than 600 parts per million ("ppm"). In reformulating the
20 Covered Products to remove DEHP, Defendant may not use butyl benzyl phthalate ("BBP"), di-
21 n-hexyl phthalate ("DnHP"), di-n-butyl phthalate ("DBP") or di-isodecyl phthalate ("DIDP") in
22 excess of trace amounts. DEHP, BBP, DnHP, DBP and DIDP are together referred to herein as
23 "Listed Phthalates."

24 **2.2 Certification From Supplier.** Defendant shall issue specifications to its
25 suppliers requiring that the Covered Products shall not contain any Listed Phthalate in excess of
26 trace amounts. Defendant shall obtain written certification from its suppliers of the Covered
27 Products certifying that the Covered Products do not contain any Listed Phthalate in excess of
28 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 the
3 Covered Products do not contain any Listed Phthalate in excess of trace amounts. Testing shall
4 be conducted in compliance with Section 2.1. All testing pursuant to this Section shall be
5 performed by an independent laboratory in accordance with both of the following test protocols:
6 (1) EPA SW8270C; and (2) EPA SW3580A (together referred to as the "Test Protocols"). At the
7 request of CEH, the results of the testing performed pursuant to this Section shall be made
8 available to CEH on a confidential basis.

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

17 **2.3.2 Covered 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 Covered Product, Defendant shall: (1) refuse to accept
20 all of the Covered Products that were purchased under the particular purchase order; (2) send a
21 notice to the supplier explaining that such Covered Products do not comply with the suppliers'
22 certification; and (3) apply the testing frequency set forth in Section 2.3.1 as though the next
23 shipment from the supplier were the first one following the Compliance Date.

24 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory
25 testing of the Covered Products. Any such testing shall be conducted by CEH at an independent
26 laboratory, in accordance with both of the Test Protocols. In the event that CEH's testing
27 demonstrates that any Covered Product contains Listed Phthalates in excess of trace amounts
28 subsequent to the Compliance Date, CEH shall inform Defendant of the test results, including

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

9 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments
10 in lieu of penalties are warranted under Section 2.4, the stipulated payment amount shall be as
11 follows for each unit of Product for which CEH produces a test result showing that Defendant
12 sold a Product containing Listed Phthalates in excess of trace amounts after the Compliance
13 Date:

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

18 **3. SETTLEMENT PAYMENTS**

19 **3.1 Penalty.** Defendant shall pay \$1,000 as a civil penalty pursuant to Health
20 and Safety Code § 25249.7(b). The penalty shall be made payable to CEH, which will apportion
21 the penalty in accordance with Health and Safety Code § 25249.12.

22 **3.2 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
23 \$11,000 in lieu of any additional penalty pursuant to Health and Safety Code § 25249.7(b). CEH
24 shall use such funds to continue its work protecting people from exposures to toxic chemicals.
25 As part of this work, CEH intends to conduct periodic testing of the Covered Products as set
26 forth in Section 2.4. The payment required under this Section shall be made payable to CEH.

27 **3.3 Attorneys' Fees and Costs.** Defendant shall pay \$23,000 to reimburse
28 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any

1 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,
2 litigating and negotiating a settlement in the public interest. The payment required under this
3 section shall be made payable to Lexington Law Group.

4 **3.4 Delivery of Payments.** All payments made pursuant to this Section 3
5 shall be delivered to the Lexington Law Group at the address set forth in Section 11.1 and shall
6 be delivered within 10 days of entry of this Consent Judgment.

7 **4. MODIFICATION OF CONSENT JUDGMENT**

8 **4.1** This Consent Judgment may be modified by written agreement of CEH
9 and Defendant, or upon motion of CEH or Defendant as provided by law.

10 **5. ENFORCEMENT OF CONSENT JUDGMENT**

11 **5.1** CEH may, by motion or application for an order to show cause, enforce
12 the terms and conditions contained in this Consent Judgment. Should CEH prevail on any such
13 motion, it shall be entitled to recover its reasonable attorneys' fees and costs associated with
14 enforcing the Consent Judgment.

15 **6. APPLICATION OF CONSENT JUDGMENT**

16 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
17 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
18 them.

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

20 **7.1** This Consent Judgment is a full, final and binding resolution between
21 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in
22 the Complaint against Defendant (including any claims that could be asserted in connection with
23 any of the Covered Products) or its parents, subsidiaries, affiliates, directors, officers, employees,
24 agents, attorneys, distributors, customers or retailers including but not limited to Sally Beauty
25 Holdings, Inc. and Sally Beauty Supply, LLC (collectively, "Defendant Releasees") based on
26 failure to warn about alleged exposures to DEHP resulting from any Covered Products
27 manufactured, distributed or sold by Defendant ("Covered Claims") on or prior to the date of
28 entry of this Consent Judgment. CEH, its directors, officers, employees and attorneys hereby

1 release all Covered Claims against Defendant Releasees. Compliance with the terms of this
2 Consent Judgment constitutes compliance with Proposition 65 for purposes of DEHP exposures
3 from the Covered Products. Nothing in this Consent Judgment is intended to release or releases
4 Defendant Releasees from any claims alleging exposures to DEHP resulting from the
5 manufacture, distribution and/or sale of vinyl gloves other than those sold by Defendant.

6 **7.2** In furtherance of the foregoing, CEH hereby waives any and all rights and
7 benefits which it now has, or in the future may have, conferred upon it with respect to DEHP
8 exposures from the Covered Products by virtue of the provisions of Section 1542 of the
9 California Civil Code, which provides as follows:

10 “A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
11 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT
12 TO EXIST IN HIS OR HER FAVOR AT THE TIME OF
13 EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR
14 HER MUST HAVE MATERIALLY AFFECTED HIS OR HER
15 SETTLEMENT WITH THE DEBTOR.”

16 CEH understands and acknowledges that the significance and consequence of this waiver of
17 California Civil Code § 1542 is that even if CEH suffers future damages arising out of or
18 resulting from, or related directly or indirectly to, in whole or in part, exposures to Listed
19 Phthalates from the Covered Products manufactured and placed in the stream of commerce prior
20 to the date of this release (“Future Claims”), it will not be able to make any claim for those
21 damages against Defendant or any Defendant Releasees. Furthermore, CEH acknowledges that it
22 intends these consequences for any such Future Claims which may exist as of the date of this
23 release but which CEH does not know exist, and which, if known, would materially affect its
24 decision to enter into this Consent Judgment, regardless of whether its lack of knowledge is the
25 result of ignorance, oversight, error, negligence, or any other cause. Nothing in this Section
26 limits or in any way affects Defendant’s obligations or CEH’s remedies under this Consent
27 Judgment.

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1 **8. SEVERABILITY**

2 **8.1** In the event that any of the provisions of this Consent Judgment are held
3 by a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
4 affected.

5 **9. GOVERNING LAW**

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

8 **10. RETENTION OF JURISDICTION**

9 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
10 the terms this Consent Judgment.

11 **11. PROVISION OF NOTICE**

12 **11.1** All notices required pursuant to this Consent Judgment and
13 correspondence shall be sent to the following:

14 For CEH:

15 Mark N. Todzo
16 Lexington Law Group
17 1627 Irving Street
18 San Francisco, CA 94122

19 For Defendant:

20 Ryan S. Goldstein
21 Quinn Emanuel Urquhart Oliver & Hedges, LLP
22 865 South Figueroa Street, 10th Floor
23 Los Angeles, CA 90017

24 **12. COURT APPROVAL**

25 **12.1** CEH will comply with the settlement notice provisions of Health and
26 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

27 **13. EXECUTION AND COUNTERPARTS**

28 **13.1** The stipulations to this Consent Judgment may be executed in counterparts


1 and by means of facsimile, which taken together shall be deemed to constitute one document.

2 **14. AUTHORIZATION**

3 **14.1** Each signatory to this Consent Judgment certifies that he or she is fully
4 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter
5 into and execute the Consent Judgment on behalf of the party represented and legally bind that
6 party. The undersigned have read, understand and agree to all of the terms and conditions of this
7 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and
8 costs.

9
10 **AGREED TO:**

11 **CENTER FOR ENVIRONMENTAL HEALTH**

12
13 
14 _____
Michael Green, Executive Director

Dated: 9/1/09

15
16 **THE SAFETY ZONE LLC**

17
18 _____

Dated: _____

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20 _____
[Name]

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22 _____
[Title]

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7 party. The undersigned have read, understand and agree to all of the terms and conditions of this
8 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and
9 costs.

10
11 **AGREED TO:**

12 **CENTER FOR ENVIRONMENTAL HEALTH**

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14 _____

Dated: _____

15
16 _____
17 [Name]

18
19 _____
20 [Title]

21 **THE SAFETY ZONE LLC**

22 
23 _____

Dated: 8/27/09

24 SANDY SEIDMAN
25 _____
26 [Name]

27 MANAGING Member
28 _____
[Title]

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and The Safety Zone LLC, 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