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6 CENTER FOR ENVIRONMENTAL HEALTH

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

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12 CENTER FOR ENVIRONMENTAL HEALTH,)

Case No. CGC-09-494337

13 Plaintiff,)

14 v.)

**[PROPOSED] CONSENT JUDGMENT
RE: DASH MEDICAL GLOVES, INC.**

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

18)
19 Defendants.)
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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. dba Basic Medical Industries, Inc., et al.*,
5 San Francisco County Superior Court Case Number CGC-09-494337 (the “Action”), for civil
6 penalties and injunctive relief pursuant to the provisions of Cal. Health & Safety Code § 25249.5,
7 *et seq.* (“Proposition 65”). The Complaint in the Action named DASH Medical Gloves, Inc.
8 (“Defendant” or “DASH”) as a defendant. CEH and DASH are referred to herein individually as
9 a “Party” and collectively as the “Parties.” On December 22, 2009, CEH filed the operative First
10 Amended Complaint (“Complaint”).

11 **1.2** DASH 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 4, 2009, CEH served DASH and the appropriate
14 public enforcement agencies with the requisite 60-day Notice (the “Notice”) alleging that DASH
15 was in violation of Proposition 65. CEH’s Notice and the Complaint in the Action allege that
16 DASH 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 DASH’s conduct violates Health & Safety Code § 25249.6, the warning provision of
21 Proposition 65. DASH disputes such allegations and asserts that all of its products are safe and
22 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 DASH as to the acts alleged in CEH’s Complaint, that venue is proper
26 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 or
9 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”), DASH shall not
13 manufacture, distribute, ship, or sell, or cause to be manufactured, distributed or sold, any
14 Product that contains in excess of trace amounts of DEHP. For purposes of this Consent
15 Judgment only, “in excess of trace amounts” is more than 600 parts per million (“ppm”). In
16 reformulating the Products to remove DEHP, DASH may not use butyl benzyl phthalate
17 (“BBP”), di-n-hexyl phthalate (“DnHP”), di-n-butyl phthalate (“DBP”) or di-isodecyl phthalate
18 (“DIDP”) in excess of trace amounts. DEHP, BBP, DnHP, DBP and DIDP are together referred
19 to herein as “Listed Phthalates.”

20 **2.2 Certification From Suppliers.** DASH shall issue specifications to its
21 suppliers requiring that the Products shall not contain DEHP or any other Listed Phthalate in
22 excess of trace amounts. DASH shall obtain written certification from its suppliers of the
23 Products certifying that the Products do not contain any Listed Phthalate in excess of trace
24 amounts.

25 **2.3 Defendant’s Testing.** In order to ensure compliance with the
26 requirements of Section 2.1, DASH shall cause to be conducted testing to confirm that Products
27 sold do not contain any Listed Phthalate in excess of trace amounts. Testing shall be conducted
28 in compliance with Section 2.1. All testing pursuant to this Section shall be performed by an

1 independent laboratory in accordance with one of the following test protocols: (1) EPA
2 SW8270C and EPA SW3580A, or (2) ASTM D3421-75 (referred to as the “Test Protocols”). At
3 the request of CEH, the results of the testing performed pursuant to this section shall be made
4 available to CEH on a confidential basis.

5 **2.3.1 Testing Frequency.** For each of the first two orders of Products
6 purchased from each of DASH’s suppliers after the Compliance Date, DASH shall randomly
7 select and test one glove from each of the greater of 0.1% (one-tenth of one percent) or eight, but
8 in no case more than ten, of the total boxes of Products purchased from each supplier of the
9 Products intended for sale. Following the testing of the first two orders as described above,
10 DASH shall, for each subsequent order, randomly select and test one glove from each of the
11 greater of 0.05% (one-twentieth of one percent) or four, but in no case more than five, of the total
12 boxes of Products purchased in that calendar year for sale from each supplier of the Products.

13 **2.3.2 Products That Contain Listed Phthalates Pursuant to**
14 **Defendant’s Testing.** If the results of the testing required pursuant to Section 2.3 show Listed
15 Phthalates in excess of trace amounts in a Product, DASH shall: (1) refuse to accept all of the
16 Products that were purchased under the particular purchase order; (2) send a notice to the
17 supplier explaining that such Products do not comply with the suppliers’ certification; and (3)
18 apply the testing frequency set forth in Section 2.3.1 as though the next shipment from the
19 supplier were the first one following the Compliance Date.

20 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory
21 testing of the Products. Any such testing shall be conducted by CEH at an independent
22 laboratory, in accordance with either of the Test Protocols. In the event that CEH’s testing under
23 either of the Testing Protocols demonstrates that the Products contain Listed Phthalates in excess
24 of trace amounts subsequent to the Compliance Date, CEH shall inform DASH in a reasonably
25 prompt manner of the test results, including information sufficient to permit DASH to identify
26 the Product(s). DASH shall, within 30 days following such notice, provide CEH, at the address
27 listed in Section 11.1, with the certification and testing information demonstrating its compliance
28 with Sections 2.2 and 2.3 of this Consent Judgment. If DASH fails to provide CEH with

1 information demonstrating that it complied with Sections 2.2 and/or 2.3, DASH shall be liable
2 for stipulated payments in lieu of penalties for Products for which CEH produces tests
3 demonstrating the presence of Listed Phthalates in excess of trace amounts in the Products. The
4 payments shall be made to CEH and used for the purposes described in Section 3.1.

5 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments
6 in lieu of penalties are warranted under Section 2.4, the stipulated payment amount shall be as
7 follows for each Occurrence of DASH selling a Product containing Listed Phthalates in excess of
8 trace amounts after the Compliance Date:

9	First Occurrence:	\$500
10	Second Occurrence:	\$750
11	Third Occurrence:	\$1,000
12	Thereafter:	\$2,500

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

23 **3. SETTLEMENT PAYMENTS**

24 **3.1 Penalty.** Defendant shall pay to CEH \$500 as a penalty pursuant to Health
25 and Safety Code § 25249.7(b). CEH shall apportion such payment in accordance with Health
26 and Safety Code §25249.12.

27 **3.2 Monetary Payment in Lieu of Penalty.** DASH shall pay to CEH \$8,000
28 in lieu of any additional penalty pursuant to Health and Safety Code § 25249.7(b). CEH shall

1 use such funds to continue its work protecting people from exposures to toxic chemicals. As part
2 of this work, CEH intends to conduct periodic testing of the Products as set forth in Section 2.4.
3 The payment required under this Section shall be made payable to CEH

4 **3.3 Attorneys' Fees and Costs.** DASH shall pay \$16,500 to reimburse CEH
5 and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other
6 costs incurred as a result of investigating, bringing this matter to DASH's attention, litigating and
7 negotiating a settlement in the public interest. The payment required under this Section shall be
8 made payable to Lexington Law Group.

9 **3.4 Delivery of Payments.** All payments made pursuant to this Section 3
10 shall be delivered to the Lexington Law Group at the address set forth in Section 11.1 and shall
11 be delivered within 10 days of entry of this Consent Judgment.

12 **4. MODIFICATION OF CONSENT JUDGMENT**

13 **4.1** This Consent Judgment may be modified by written agreement of CEH
14 and DASH, or upon motion of CEH or DASH as provided by law. Grounds for such
15 modification include, but are not limited to, any change in law that would (1) render Proposition
16 65 inapplicable to the Products or to DEHP, or (2) establish a compliance standard that would
17 allow concentrations of DEHP and/or any Listed Phthalate in the Products to exceed 600 ppm
18 without a Proposition 65 warning.

19 **5. ENFORCEMENT OF CONSENT JUDGMENT**

20 **5.1** CEH may, by motion or application for an order to show cause, enforce
21 the terms and conditions contained in this Consent Judgment. Should CEH prevail on any such
22 motion, it shall be entitled to recover its reasonable attorneys' fees and costs associated with
23 enforcing the Consent Judgment.

24 **6. APPLICATION OF CONSENT JUDGMENT**

25 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
26 hereto, their divisions, subdivisions, parents and subsidiaries, and the successors or assigns of
27 any of them.
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1 **7. CLAIMS COVERED AND RELEASE OF CLAIMS**

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

13 **8. SEVERABILITY**

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

17 **9. GOVERNING LAW**

18 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
19 State of California.

20 **10. RETENTION OF JURISDICTION**

21 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
22 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:

26 For CEH:

27 Mark N. Todzo
28 Lexington Law Group
 1627 Irving Street
 San Francisco, CA 94122

1 For Defendant:

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

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and:

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Stephen E. Ryd
Ryd Law Group, P.C.
1900 Spring Road, Suite 216
Oak Brook, IL 60523

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12. COURT APPROVAL

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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 force or effect.

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13. EXECUTION AND COUNTERPARTS

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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



Charlie Pizarro, Assistant Director

Dated: 3/11/10

DASH MEDICAL GLOVES, INC.

[Name]

[Title]

Dated: _____

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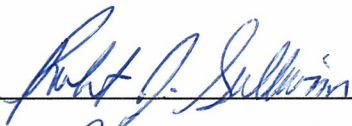
AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Charlie Pizarro, Assistant Director

Dated: _____

DASH MEDICAL GLOVES, INC.



Dated: 3/11/10

ROBERT J. SULLIVAN

[Name]

PRESIDENT

[Title]

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and DASH Medical
Gloves, 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