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6 CENTER FOR ENVIRONMENTAL HEALTH

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

10
11 CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

12 Plaintiff,

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14 v.

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

17 Defendants.
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Case No. CGC-09-494337

[PROPOSED] CONSENT JUDGMENT
RE: BOSS MANUFACTURING COMPANY

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"). On
7 December 22, 2009, CEH amended the Complaint to name Boss Manufacturing Company
8 ("Defendant") as a defendant (CEH and Defendant collectively referred to as the "Parties").

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

11 **1.3** On or about September 22, 2009, CEH served Defendant and the
12 appropriate public enforcement agencies with the requisite 60-day Notice (the "Notice") alleging
13 that Defendant was in violation of Proposition 65. CEH's Notice and the Complaint in the CEH
14 Action allege that Defendant exposes people who use or otherwise handle the Products to di(2-
15 ethylhexyl) phthalate ("DEHP"), a chemical listed by the State of California as known to cause
16 cancer, birth defects and other reproductive harm, without first providing clear and reasonable
17 warning to such persons regarding the carcinogenicity and reproductive toxicity of DEHP. The
18 Notice and Complaint allege that Defendant's conduct violates Health & Safety Code § 25249.6,
19 the warning provision of Proposition 65. Defendant disputes such allegations and asserts that all
20 of its products are safe and comply with all applicable laws.

21 **1.4** For purposes of this Consent Judgment only, the parties stipulate that this
22 Court has jurisdiction over the subject matter of the violations alleged in CEH's Complaint and
23 personal jurisdiction over Defendant as to the acts alleged in CEH's Complaint, that venue is
24 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent
25 Judgment as a full and final resolution of all claims which were or could have been raised in the
26 Complaint based on the facts alleged therein.

27 **1.5** The Parties enter into this Consent Judgment pursuant to a settlement of
28 certain disputed claims between the Parties as alleged in the Complaint. By executing this

1 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties'
2 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
3 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
4 Consent Judgment constitute or be construed as an admission by the Parties of any fact,
5 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
6 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
7 any other or future legal proceedings.

8 **2. COMPLIANCE - REFORMULATION**

9 **2.1 Reformulation Standard – Removal of DEHP.** Beginning 30 days after
10 the date of entry of this Consent Judgment (the “Compliance Date”), Defendant shall not
11 manufacture, distribute, ship, or sell in California, or cause to be manufactured, distributed or sold
12 in California, any Product that contains in excess of trace amounts of DEHP. For purposes of this
13 Consent Judgment only, “in excess of trace amounts” is more than 600 parts per million (“ppm”).
14 In reformulating the Products to remove DEHP, Defendant may not use butyl benzyl phthalate
15 (“BBP”), di-n-hexyl phthalate (“DnHP”), di-n-butyl phthalate (“DBP”) or di-isodecyl phthalate
16 (“DIDP”) as identified and listed under Proposition 65 in excess of trace amounts as defined
17 above. DEHP, BBP, DnHP, DBP and DIDP are together referred to herein as “Listed
18 Phthalates.”

19 **2.2 Certification From Suppliers.** For so long as Defendant manufactures,
20 distributes, or ships Products for sale in California, Defendant shall issue specifications to its
21 suppliers requiring that the Products it intends to ship to California shall not contain DEHP or any
22 other Listed Phthalate in excess of trace amounts. Defendant shall obtain written certification
23 from its suppliers of such Products certifying that they do not contain DEHP.

24 **2.3 Defendant’s Testing.** In order to ensure compliance with the
25 requirements of Section 2.1, Defendant shall cause to be conducted the testing described below to
26 confirm that Products intended for sale in California do not contain in excess of trace amounts of
27 DEHP. Testing shall be conducted in compliance with Section 2.1. All testing pursuant to this
28 section shall be performed by an independent laboratory in accordance with both of the following

1 test protocols: (1) EPA SW8270C; and (2) EPA SW3580A (together referred to as the “Test
2 Protocols”). At the written request of CEH, the results of the testing performed pursuant to this
3 section shall be made available to CEH on a confidential basis.

4 **2.3.1 Testing Frequency.** For each of Defendant’s first two orders of Products
5 from each of Defendant’s suppliers after the Compliance Date, either Defendant itself or its
6 supplier shall randomly select and test two (2) sample Products intended for sale in California.
7 Thereafter, for each further order of Products, either Defendant itself or its supplier shall
8 randomly select and test one (1) sample Product intended for sale in California. Should
9 Defendant stop selling or causing to be sold Products in California, the testing requirements of
10 Section 2.3 shall cease to apply. However, should Defendant begin such sales again, Defendant
11 shall begin testing again, and shall apply the testing frequency set forth in herein as though the
12 first shipment following Defendant’s re-initiation of Product sales in California were the first one
13 following the Compliance Date. Defendant shall have no further obligation to either test products
14 or require testing by its suppliers after December 31, 2013.

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

22 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory
23 testing of the Products. Any such testing shall be conducted by CEH at an independent
24 laboratory, in accordance with both of the Test Protocols. In the event that CEH’s testing
25 demonstrates that the Products contain Listed Phthalates in excess of trace amounts subsequent to
26 the Compliance Date, CEH shall inform Defendant of the test results, including information
27 sufficient to permit Defendant to identify the Product(s). Upon written request, CEH will also
28 provide copies of any test results on the Products it is relying on to Defendant, along with the

1 Product packaging and, if requested by Defendant, a sample of any remaining, untested Product
2 from the same package as the allegedly non-compliant Product. Defendant shall, within 30 days
3 following such notice, provide CEH, at the address listed in Section 11, with the certification and
4 testing information demonstrating its compliance with Sections 2.2 and 2.3 of this Consent
5 Judgment. If Defendant fails to provide CEH with information demonstrating that it complied
6 with Sections 2.2 and/or 2.3, or otherwise fails to identify an error in CEH's test results which
7 error caused CEH to erroneously conclude that a Product intended for sale in California did not
8 comply with this Consent Judgment, Defendant shall be liable for stipulated payments in lieu of
9 penalties pursuant to Section 2.4.1 below for Products for which CEH produces tests
10 demonstrating the presence of Listed Phthalates in the Products. The payments shall be made to
11 CEH and used for the purposes described in Section 3.1. If Defendant provides certification and
12 testing information demonstrating its compliance with Sections 2.1, 2.2 and 2.3, Defendant shall
13 not be liable for any such stipulated payments or for any violation of Section 2.1 of this Consent
14 Judgment.

15 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments
16 in lieu of penalties are warranted under section 2.4, the stipulated payment amount shall be as
17 follows for each Occurrence of Defendant selling a Product containing Listed Phthalates in excess
18 of trace amounts after the Compliance Date:

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

23 CEH shall have the burden of proving noncompliance by a preponderance of the evidence. As
24 used in this section 2.4.1, an "Occurrence" is the sale of any number of Products in California
25 from the same lot containing Listed Phthalates.

26 **2.5 Products in the Stream of Commerce.** Defendant's Products that
27 have been manufactured, distributed, shipped, sold, or that are otherwise in the stream of
28 commerce prior to the Compliance Date shall be released from any claims that were brought or

1 that could be brought by CEH in the Complaint, as though they were Covered Claims within the
2 meaning of Section 7.1, below. As a result, the stipulated payments and other obligations of this
3 Section 2 do not apply to these Products.

4 **3. SETTLEMENT PAYMENTS**

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

8 **3.2 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
9 \$ 3800 in lieu of any additional civil penalty pursuant to Health and Safety Code § 25249.7(b).
10 CEH shall use such funds to continue its work protecting people from exposures to toxic
11 chemicals. As part of this work, CEH intends to conduct periodic testing of the Products as set
12 forth in Section 2.4. The payment required under this section shall be made payable to CEH.

13 **3.3 Attorneys' Fees and Costs.** Defendant shall pay \$ 8,200 to reimburse
14 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
15 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,
16 litigating and negotiating a settlement in the public interest. The payment required under this
17 section shall be made payable to Lexington Law Group, LLP.

18 **3.4 Delivery of payments.** All payments made pursuant to this Section 3 shall
19 be delivered to the Lexington Law Group, LLP at the address set forth in Section 11.1 and shall
20 be delivered within 14 days of entry of this Consent Judgment.

21 **4. MODIFICATION OF CONSENT JUDGMENT**

22 **4.1** This Consent Judgment may only be modified by written agreement of
23 CEH and Defendant, or upon motion of CEH or Defendant as provided by law.

24 **4.2** In the event that CEH in a subsequent settlement of a Proposition 65 action
25 involving vinyl gloves shall define "in excess of trace amounts" of Listed Phthalates (or any
26 Phthalate identified as a Listed Phthalate in this Consent Judgment) to be a figure higher than 600
27 ppm in the vinyl gloves, then Defendant may, after meeting and conferring with CEH, seek
28 modification of this Consent Judgment upon a duly noticed motion and hearing to substitute such

1 higher figure for the 600 ppm reformulation standard in Section 2.1 and CEH shall not oppose
2 such motion.

3 **5. ENFORCEMENT OF CONSENT JUDGMENT**

4 **5.1** After meeting and conferring in an effort to resolve any dispute, either
5 party may, by motion or application of an order to show cause, enforce the terms and conditions
6 contained in this Consent Judgment. The prevailing party on any such motion shall be entitled to
7 recover its reasonable attorney's fees and costs associated with enforcing the Consent Judgment
8 or opposing the motion to enforce as the case may be.

9 **6. APPLICATION OF CONSENT JUDGMENT**

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

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

14 **7.1** This Consent Judgment is a full, final and binding resolution between CEH
15 acting on behalf of itself and in the public interest, and Defendant and its parents, shareholders,
16 divisions, subdivisions, subsidiaries, partners, affiliates and their successors and assigns
17 ("Defendant Releasees"), and those to whom Defendant Releasees distribute or sell the Products,
18 including but not limited to distributors, wholesalers, customers, retailers, franchisees,
19 cooperative members, and licensees ("Downstream Defendant Releasees"), of any violation of
20 Proposition 65 or any other statutory or common law claims that have been or could have been
21 asserted in the public interest against Defendant, Defendant Releasees, and Downstream
22 Defendant Releasees regarding the alleged failure to warn about alleged exposures to DEHP
23 resulting from any Products manufactured, distributed or sold by Defendant on or prior to the date
24 of entry of this Consent Judgment ("Covered Claims").

25 **7.2** CEH, its directors, officers, employees and attorneys, for themselves and
26 acting on behalf of the public interest pursuant to Health & Safety Code § 25249.7(d), hereby
27 release, waive and forever discharge any and all Covered Claims that have been or could have
28 been asserted in the public interest against Defendant, Defendant Releasees and Downstream

1 Defendant Releasees.

2 7.3 Compliance with the terms of this Consent Judgment by Defendant and
3 Defendant Releasees shall constitute compliance by that Defendant, its Defendant Releasees and
4 their Downstream Defendant Releasees with Proposition 65 for purposes of exposures to DEHP
5 or any Listed Phthalates from the Products.

6 **8. SEVERABILITY**

7 **8.1** In the event that any of the provisions of this Consent Judgment are held by
8 a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
9 affected.

10 **9. GOVERNING LAW**

11 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
12 State of California.

13 **10. RETENTION OF JURISDICTION**

14 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
15 the terms this Consent Judgment.

16 **11. PROVISION OF NOTICE**

17 **11.1** All notices required pursuant to this Consent Judgment and correspondence
18 shall be sent to the following:

19 For CEH:

20 Mark N. Todzo
21 Lexington Law Group, LLP
 1627 Irving Street
 San Francisco, CA 94122

22 For Defendant:

23 General Counsel
24 Boss Manufacturing Company
 8235 Forsyth Blvd., Suite 400
 St. Louis, MO 63105

25 With a Copy to:

26 James Robert Maxwell
27 Rogers Joseph O'Donnell, PLC
 311 California Street, 10th Floor
 San Francisco, CA 94104

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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.

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.

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.

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



Michael Green, Executive Director
Center for Environmental Health

Dated: 6/22/10

Charles Pizarro, Associate Director

BOSS MANUFACTURING COMPANY

Dated: _____

[Name]

[Title]

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AGREED TO:
CENTER FOR ENVIRONMENTAL HEALTH

Michael Green, Executive Director
Center for Environmental Health

Dated: _____

BOSS MANUFACTURING COMPANY

By: *James F. Sanders*

Dated: 6/22/10

James F. Sanders
[Name]

Vice President
[Title]

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Boss Manufacturing 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