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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

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

13 Plaintiff,

14 v.

15  
16 BASIC INTERNATIONAL, INC. DBA  
BASIC MEDICAL INDUSTRIES, INC.;  
17 DASH MEDICAL GLOVES, INC.;  
AMMEX CORPORATION; BIG TIME  
18 PRODUCTS, LLC; BOSS  
MANUFACTURING COMPANY;  
19 GOLDMAX INDUSTRIES, INC.; PRO-  
STAT, INC.; RITE AID CORPORATION;  
20 and Defendant DOES 1 through 200,  
inclusive,

21 Defendants.

Case No. CGC-09-494337

**[PROPOSED] CONSENT JUDGMENT  
RE: GOLDMAX INDUSTRIES, INC.**

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 Goldmax Industries, Inc.  
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 in the State of California (the “Products”).

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.** As of the date of entry of  
10 this Consent Judgment (the “Compliance Date”), Defendant shall not manufacture, distribute,  
11 ship, or sell in California, or cause to be manufactured, distributed or sold in California, any  
12 Product that contains in excess of trace amounts of DEHP. For purposes of this Consent  
13 Judgment only, “in excess of trace amounts” is more than 600 parts per million (“ppm”). In  
14 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.** Following the Compliance Date, for so  
20 long as Defendant manufactures, distributes, or ships Products for sale in California, Defendant  
21 shall issue specifications to its suppliers requiring that the Products it intends to ship to California  
22 shall not contain DEHP or any other Listed Phthalates in excess of trace amounts. Defendant  
23 shall obtain written certification from its suppliers of such Products certifying that they do not  
24 contain DEHP.

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

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

5 **2.3.1 Testing Frequency.** For the first two orders of Products from  
6 each of Defendant’s suppliers after the Compliance Date, Defendant shall cause its supplier to  
7 randomly select and test three (3) total Products intended for sale in California at a laboratory  
8 certified to test under the federal Consumer Product Safety Improvement Act (“CPSIA”).  
9 Following the testing of the first two orders as described above, Defendant shall, beginning on  
10 January 1, 2012, at least once annually for each supplier of Products, randomly select and test  
11 three (3) of the total Products purchased in that calendar year intended for sale in California from  
12 each supplier of the Products. Should Defendant stop selling or causing to be sold Products  
13 manufactured or imported after Compliance Date in California, the testing requirements of  
14 Section 2.3 shall cease to apply. However, should Defendant begin such sales again, of Products  
15 manufactured or imported after Compliance Date, Defendant shall begin testing again, and shall  
16 apply the testing frequency set forth in 2.3.1 as though the first shipment following Defendant’s  
17 re-initiation of Product sales in California were the first one following the Compliance Date.  
18 Defendant shall have no further obligation to either test products or require testing by its suppliers  
19 after December 31, 2013.

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

27 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory  
28 testing of the Products manufactured and/or imported subsequent to the compliance date, and

1 intended for sale in California. Any such testing shall be conducted by CEH at an independent  
2 laboratory, in accordance with the Test Protocols. In the event that CEH's testing  
3 demonstrates that the Products manufactured and/or imported subsequent to the compliance date  
4 and intended for sale in California contain Listed Phthalates in excess of trace amounts  
5 subsequent to the Compliance Date, CEH shall inform Defendant of the test results, including  
6 information sufficient to permit Defendant to identify the Product(s). Upon written request, CEH  
7 will also provide copies of any test results on the Products it is relying on to Defendant, along  
8 with the Product packaging and, if requested by Defendant, a sample of any remaining, untested  
9 Product from the same package as the allegedly non-compliant Product. Defendant shall, within  
10 30 days following such notice, provide CEH, at the address listed in Section 11, with the  
11 certification and testing information demonstrating its compliance with Sections 2.2 and 2.3 of  
12 this Consent Judgment. If Defendant fails to provide CEH with information demonstrating that it  
13 complied with Sections 2.2 and/or 2.3, or otherwise fails to identify an error in CEH's test results  
14 which error caused CEH to erroneously conclude that a Product intended for sale in California did  
15 not comply with this Consent Judgment, Defendant shall be liable for stipulated payments in lieu  
16 of penalties pursuant to Section 2.4.1 below for Products for which CEH produces tests  
17 demonstrating the presence of Listed Phthalates in the Products. The payments shall be made to  
18 CEH and used for the purposes described in Section 3.2. If Defendant provides certification and  
19 testing information demonstrating its compliance with Sections 2.1, 2.2 and 2.3, Defendant shall  
20 not be liable for any such stipulated payments or for any violation of this Consent Judgment.

21 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments  
22 in lieu of penalties are warranted under section 2.4, the stipulated payment amount shall be as  
23 follows for each "Occurrence" of Defendant selling a Product containing Listed Phthalates  
24 manufactured and/or imported subsequent to the compliance date and intended for sale in  
25 California after the Compliance Date:

26	First Occurrence:	\$500
27	Second Occurrence:	\$750
28	Third Occurrence:	\$1,000

1                                    Thereafter:                                    \$2,500

2 CEH shall have the burden of proving noncompliance by a preponderance of the evidence. As  
3 used in this section 2.4.1, an “Occurrence” is the sale of any number of Products in California  
4 from the same lot containing Listed Phthalates.

5                                    **2.5    Products in the Stream of Commerce.** Defendant’s Products that have  
6 been manufactured, distributed, shipped, sold, or that are otherwise in the stream of commerce  
7 prior to the Compliance Date shall be released from any claims that were brought or that could be  
8 brought by CEH in the Complaint, as though they were Covered Claims within the meaning of  
9 Section 7, below. As a result, the stipulated payments and other obligations of this Section 2 do  
10 not apply to these Products. As of the Effective Date, the Products will be identified with batch  
11 numbers which will be provided to CEH up through December 31, 2013. The batch number is  
12 listed on the outside of the product packaging on the bottom near the bar code.

13                                    **3.       SETTLEMENT PAYMENTS**

14                                    **3.1    Civil Penalty.** Defendant shall pay \$500 as a civil penalty pursuant to  
15 Health and Safety Code § 25249.7(b). The penalty shall be made payable to CEH, which will  
16 apportion the penalty in accordance with Health and Safety Code § 25249.12.

17                                    **3.2    Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH  
18 \$4,000 in lieu of any additional civil penalty pursuant to Health and Safety Code § 25249.7(b)  
19 and 11 California Code of Regulations §3203(b). CEH shall use such funds to continue its work  
20 protecting people from exposures to toxic chemicals. As part of this work, CEH intends to  
21 conduct periodic testing of the Products as set forth in Section 2.4. The payment required under  
22 this section shall be made payable to CEH.

23                                    **3.3    Attorneys’ Fees and Costs.** Defendant shall pay \$8,000 to reimburse  
24 CEH and its attorneys for their reasonable investigation fees and costs, attorneys’ fees, and any  
25 other costs incurred as a result of investigating, bringing this matter to Defendant’s attention,  
26 litigating and negotiating a settlement in the public interest. The payment required under this  
27 section shall be made payable to Lexington Law Group.

28                                    **3.4    Delivery of payments.** All payments made pursuant to this Section 3 shall

1 be delivered to the Lexington Law Group at the address set forth in Section 11.1 and shall be  
2 delivered within 14 days of entry of this Consent Judgment.

3 **4. MODIFICATION OF CONSENT JUDGMENT**

4 **4.1** This Consent Judgment may only be modified by written agreement of  
5 CEH and Defendant, or upon motion of CEH or Defendant as provided by law.

6 **4.2** In the event that CEH in a subsequent settlement of a Proposition 65 action  
7 involving vinyl gloves shall define “in excess of trace amounts” of DEHP (or any Phthalate  
8 identified as a Listed Phthalate in this Consent Judgment) to be a figure higher than 600 ppm in  
9 the vinyl gloves, then Defendant may, after meeting and conferring with CEH, seek modification  
10 of this Consent Judgment upon a duly noticed motion and hearing to substitute such higher figure  
11 for the 600 ppm reformulation standard in Section 2.1 and CEH shall not oppose such motion.

12 **5. ENFORCEMENT OF CONSENT JUDGMENT**

13 **5.1** After meeting and conferring in an effort to resolve any dispute, either  
14 CEH or Defendant may, by motion or application of an order to show cause, enforce the terms  
15 and conditions contained in this Consent Judgment. The prevailing party on any such motion  
16 shall be entitled to recover its reasonable attorney’s fees and costs associated with enforcing the  
17 Consent Judgment or opposing the motion as the case may be.

18 **6. APPLICATION OF CONSENT JUDGMENT**

19 **6.1** This Consent Judgment shall apply to and be binding upon the Parties  
20 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of  
21 them.

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

23 **7.1** This Consent Judgment is a full, final and binding resolution between  
24 CEH, acting on behalf of itself and in the public interest, and Defendant and its parents,  
25 shareholders, divisions, subdivisions, subsidiaries, partners, affiliates and their successors and  
26 assigns (“Defendant Releasees”), and those to whom Defendant Releasees distribute or sell the  
27 Products, including but not limited to distributors, wholesalers, customers, retailers, franchisees,  
28 cooperative members, and licensees (“Downstream Defendant Releasees”), of any violation of

1 Proposition 65 or any other statutory or common law claims that have been or could have been  
2 asserted in the public interest against Defendant, Defendant Releasees, and Downstream  
3 Defendant Releasees regarding the alleged failure to warn about exposures to DEHP resulting  
4 from any Products manufactured, distributed or sold by Defendant on or prior to the date of entry  
5 of this Consent Judgment (“Covered Claims”).

6 **7.2** CEH, its directors, officers, employees and attorneys, for themselves and  
7 acting on behalf of the public interest pursuant to Health & Safety Code § 25249.7(d), hereby  
8 release, waive, and forever discharge any and all Covered Claims that have been or could have  
9 been asserted in the public interest against Defendant, Defendant Releasees, and Downstream  
10 Defendant Releasees.

11 **7.3** Compliance with the terms of this Consent Judgment by Defendant and its  
12 Defendant Releasees shall constitute compliance by that Defendant, its Defendant Releasees and  
13 their Downstream Defendant Releasees with Proposition 65 for purposes of exposures to DEHP  
14 or any Listed Phthalates from the Products.

15 **8. SEVERABILITY**

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

19 **9. GOVERNING LAW**

20 **9.1** The terms of this Consent Judgment shall be governed by the laws of the  
21 State of California.

22 **10. RETENTION OF JURISDICTION**

23 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce  
24 the terms this Consent Judgment.

25 **11. PROVISION OF NOTICE**

26 **11.1** All notices required pursuant to this Consent Judgment and correspondence  
27 shall be sent to the following:

28 For CEH:



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

For Defendant:

Jin Nishi  
Lee, Bazzo & Nishi, LLP  
2100 Main Street, Suite 400  
Irvine, California 92614

**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.

**AGREED TO:**


**CENTER FOR ENVIRONMENTAL HEALTH**

  
\_\_\_\_\_  
Charlie Pizarro, Assistant Director  
Center for Environmental Health

Dated: 2/15/11

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**GOLDMAX INDUSTRIES, INC.**

  
\_\_\_\_\_  
Paul Cheng, President  
Goldmax Industries, Inc.

Dated: 2/7/2011

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**ORDER AND JUDGMENT**

Based upon the stipulated Consent Judgment between CEH and Goldmax Industries, Inc., the settlement is approved and the clerk is directed to enter judgment in accordance with the terms herein.

Dated: \_\_\_\_\_

\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT  
OF THE STATE OF CALIFORNIA