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6 CENTER FOR ENVIRONMENTAL HEALTH

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

10
11 CENTER FOR ENVIRONMENTAL
HEALTH,

12 Plaintiff,

13 vs.

14 MAPA SPONTEX, INC.; VWR, INC.;
15 VWR INTERNATIONAL, INC.; VWR
INTERNATIONAL, LLC; Defendant
16 DOES 1 through 200, inclusive,

17 Defendants.

Case No. CGC-10-497670

**[PROPOSED] CONSENT JUDGMENT RE:
MAPA SPONTEX, INC.**

18
19 **1. INTRODUCTION**

20 **1.1** On March 10, 2009, plaintiff the Center for Environmental Health (“CEH”),
21 a non-profit corporation acting in the public interest, filed a complaint entitled *Center for*
22 *Environmental Health v. Mapa Spontex, Inc., et al.*, San Francisco County Superior Court Case
23 Number CGC-10-497670 (the “Complaint”), for civil penalties and injunctive relief pursuant to
24 the provisions of Cal. Health & Safety Code § 25249.5, et seq. (“Proposition 65”). The
25 Complaint names Mapa Spontex, Inc. (“Mapa Spontex” or “Defendant”) as a defendant.

26 **1.2** Defendant is a corporation that employs 10 or more persons and
27 manufactured, distributed and/or sold Mapa Spontex branded disposable vinyl gloves in the State
28 of California. As used in this Consent Judgment, “Products” refers to Mapa Spontex branded

1 disposable vinyl gloves manufactured or shipped for distribution and/or sale by Defendant in the
2 State of California.

3 **1.3** On or about November 13, 2009, CEH served Defendant and the
4 appropriate public enforcement agencies with a 60-day notice (the “Notice”) alleging that
5 Defendant had distributed the Product without required warnings, in violation of Proposition 65.
6 Specifically, CEH’s Notice, as well as the Complaint in this action, allege that Defendant has
7 caused people who use or otherwise handle the Product to be exposed to di(2-ethylhexyl)
8 phthalate (“DEHP”), a chemical known to the State of California to cause cancer, birth defects
9 and other reproductive harm, without first providing clear and reasonable warning to such persons
10 regarding the carcinogenicity and reproductive toxicity DEHP. The Notice and Complaint allege
11 that Defendant’s conduct violates Health & Safety Code § 25249.6, the warning provision of
12 Proposition 65.

13 **1.4** Defendant disputes the CEH allegations, has answered the Complaint
14 denying the allegations and asserting defenses, and asserts that all of its Products are safe and
15 comply with all applicable laws. Defendant further asserts that the Product was reformulated in
16 2008, prior to the Notice, to reduce and eliminate DEHP.

17 **1.5** For purposes of this Consent Judgment only, the Parties stipulate that this
18 Court has jurisdiction over the subject matter of the violations alleged in CEH’s Complaint and
19 personal jurisdiction over Defendant as to the acts alleged in CEH’s Complaint, that venue is
20 proper in the County of San Francisco, and that this Court has jurisdiction to enter this Consent
21 Judgment as a full and final resolution of all claims which were or could have been raised in the
22 Complaint based on the facts alleged therein.

23 **1.6** The Parties enter into this Consent Judgment pursuant to a settlement of
24 certain disputed claims between the Parties as alleged in the Complaint. By executing this
25 Consent Judgment, the Parties do not admit any facts or conclusions of law. It is the Parties’
26 intent that nothing in this Consent Judgment shall be construed as an admission by the Parties of
27 any fact, conclusion of law, issue of law or violation of law, nor shall compliance with the
28 Consent Judgment constitute or be construed as an admission by the Parties of any fact,

1 conclusion of law, issue of law, or violation of law. Nothing in this Consent Judgment shall
2 prejudice, waive or impair any right, remedy, argument or defense the Parties may have in this or
3 any other or future legal proceedings.

4 **2. COMPLIANCE**

5 **2.1 Reformulation.** Upon entry of this Consent Judgment, Defendant shall
6 not manufacture or ship for sale or distribution in California, or cause to be manufactured or
7 shipped for distribution or sale in California, any Products that contain in excess of trace amounts
8 of DEHP. For purposes of this Consent Judgment only, “in excess of trace amounts” shall mean
9 more than 600 parts per million (“ppm”). In reformulating such Products to reduce or eliminate
10 DEHP, Defendant shall not use butyl benzyl phthalate (“BBP”), di-n-hexyl phthalate (“DnHP”),
11 di-n-butyl phthalate (“DBP”) or di-isodecyl phthalate (“DIDP”) in excess of trace amounts.
12 DEHP, BBP, DnHP, DBP and DIDP are together referred to herein as “Listed Phthalates.”

13 **2.2 Certification from Suppliers.** Defendant shall issue specifications to its
14 suppliers of the Products requiring that the Products not contain any Listed Phthalate in excess of
15 trace amounts. Defendant shall obtain written certification from its suppliers of the Products
16 certifying that the Products do not contain DEHP in excess of trace amounts. Defendant has
17 provided CEH with sufficient confirmation from its current supplier to satisfy the requirements
18 of this section. However, should Defendant obtain a different supplier for the Products, shall
19 issue specifications and obtain certifications as required herein.

20 **2.3 Defendant’s Testing.** Defendant has provided CEH with sufficient test
21 data regarding its current supplier to satisfy the testing requirements of this section for such
22 supplier. However, should Defendant obtain a different supplier for the Products, the following
23 testing requirements shall apply:

24 (a) **Testing Protocols.** In order to ensure compliance with the reformulation
25 requirements of Section 2.1, Defendant shall cause to be conducted testing to confirm that
26 Products shipped for sale to California consumers do not contain in excess of trace amounts of
27 any Listed Phthalate. Testing shall be conducted in compliance with Section 2.1. All testing
28 pursuant to this section shall be performed by an independent laboratory in accordance with both

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

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

12 (c) **Products That Contain Listed Phthalates Pursuant to Defendant’s**
13 **Testing.** If the results of the testing required pursuant to Section 2.3(i) show any Listed Phthalate
14 in excess of trace amounts in a Product, Defendant shall: (1) refuse to accept all of the Products
15 that were purchased under the particular purchase order; (2) send a notice to the supplier
16 explaining that such Products do not comply with either Defendant’s specifications for Listed
17 Phthalates or the suppliers’ certification; and (3) apply the testing frequency set forth in Section
18 2.2.3 as though the next shipment from the supplier were the first one following the Compliance
19 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 both of the Test Protocols. In the event that CEH’s testing
23 demonstrates that Products shipped by Defendant to California subsequent to the Compliance
24 Date contain Listed Phthalates in excess of trace amounts, CEH shall inform Defendant of the test
25 results, including information sufficient to permit Defendant to identify the Product(s).
26 Defendant shall, within 30 days following such notice, provide CEH, at the address listed in
27 Section 11.1, with the certification and testing information demonstrating its compliance with
28 Sections 2.2 and 2.3 of this Consent Judgment. If Defendant fails to provide CEH with

1 information demonstrating that it complied with Sections 2.2 and/or 2.3 or otherwise fails to
2 identify an error in CEH's test results, which error caused CEH erroneously to conclude a Product
3 did not comply with this Consent Judgment, Defendant shall be liable for stipulated payments in
4 lieu of penalties for Products for which CEH produces tests demonstrating the presence of Listed
5 Phthalates in the Products. The payments shall be made to CEH and used for the purposes
6 described in Section 3.2.

7 **2.5 Stipulated Payments In Lieu of Penalties.** If stipulated payments in lieu
8 of penalties are warranted under Section 2.4, the stipulated payment amount shall be as follows
9 for each unit of Product for which CEH produces a test result showing that Defendant sold that
10 Product containing Listed Phthalates after the Compliance Date:

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

15 **2.6 Products in the Stream of Commerce.** Defendant's Products that have
16 been manufactured, distributed, shipped, sold, or that are otherwise in the stream of commerce
17 prior to the Compliance Date shall be released from any claims that were brought or that could be
18 brought by CEH in the Complaint, as though they were Covered Claims within the meaning of
19 Section 6.1, below. As a result, the obligations of this Section 2 do not apply to these Products.

20 **3. SETTLEMENT PAYMENTS**

21 **3.1 Penalty.** Defendant shall pay \$800 as a civil penalty pursuant to Health
22 and Safety Code § 25249.7(b). The penalty shall be made payable to CEH, which will apportion
23 the penalty in accordance with Health and Safety Code § 25249.12.

24 **3.2 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
25 \$6,200 in lieu of any additional penalty pursuant to Health and Safety Code § 25249.7(b). CEH
26 shall use such funds to continue its work protecting people from exposures to toxic chemicals. As
27 part of this work, CEH intends to conduct periodic testing of the Products as set forth in
28 Section 2.1.3. In addition, as part of its Community Environmental Action and Justice Fund,

1 CEH will use four percent of such funds to award grants to grassroots environmental justice
2 groups working to educate and protect people from exposures to toxic chemicals. The method of
3 selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The
4 payment in lieu of penalty check shall be made payable to CEH.

5 **3.3 Attorneys' Fees and Costs.** Defendant shall pay \$13,000 to reimburse
6 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
7 other costs incurred as a result of investigating, providing Notice, filing the Complaint, and
8 negotiating seeking court approval for a settlement in the public interest. The payment required
9 under this section shall be made payable to Lexington Law Group.

10 **3.4 Delivery of Payments.** The payments required under this Section 3 shall
11 be delivered to the Lexington Law Group at the address set forth in Section 11.1 within 10 days
12 of entry of this Consent Judgment.

13 **4. MODIFICATION OF CONSENT JUDGMENT**

14 **4.1** This Consent Judgment may be modified by written agreement of CEH and
15 Defendant, or upon motion of CEH or Defendant as provided by law.

16 **5. ENFORCEMENT OF CONSENT JUDGMENT**

17 **5.1** CEH may, by motion or application for an order to show cause, enforce the
18 terms and conditions contained in this Consent Judgment. Should CEH prevail on any such
19 motion, it shall be entitled to recover its reasonable attorneys' fees and costs associated with
20 enforcing the Consent Judgment.

21 **6. APPLICATION OF CONSENT JUDGMENT**

22 **6.1** This Consent Judgment shall apply to and be binding upon the Parties
23 hereto, their divisions, subdivisions and subsidiaries, and the successors or assigns of any of
24 them.

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

26 **7.1** This Consent Judgment is a full, final and binding resolution between CEH
27 and Defendant of any violation of Proposition 65 that was or could have been asserted in the
28 Complaint against Defendant (including any claims that could be asserted in connection with any

1 of the Products covered by this Consent Judgment), and/or against Defendant's parents,
2 subsidiaries, affiliates, directors, officers, employees, agents, attorneys, distributors, retailers or
3 customers (collectively, "Defendant Releasees"), based on failure to warn of alleged exposures to
4 DEHP or any Listed Phthalates resulting from any Products manufactured or shipped for
5 distribution or sale by Defendant ("Covered Claims") on or prior to the date of entry of this
6 Consent Judgment. CEH, its directors, officers, employees and attorneys, on behalf of
7 themselves and the public, hereby release all Covered Claims against Defendant Releasees.
8 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
9 for purposes of exposures to Listed Phthalates that may be contained in the Products.

10 **8. SEVERABILITY**

11 **8.1** In the event that any of the provisions of this Consent Judgment are held by
12 a court to be unenforceable, the validity of the enforceable provisions shall not be adversely
13 affected.

14 **9. GOVERNING LAW**

15 **9.1** The terms of this Consent Judgment shall be governed by the laws of the
16 State of California.

17 **10. RETENTION OF JURISDICTION**

18 **10.1** This Court shall retain jurisdiction of this matter to implement and enforce
19 the terms this Consent Judgment.

20 **11. PROVISION OF NOTICE**

21 **11.1** All notices required pursuant to this Consent Judgment and correspondence
22 shall be sent to the following:

23 For CEH:

24 Mark N. Todzo
25 Lexington Law Group, LLP
26 1627 Irving Street
27 San Francisco, CA 94122
28

1 For Defendant:

2 Christopher Locke
3 Farella Braun + Martel LLP
4 235 Montgomery Street, 17th Floor
5 San Francisco, CA 94104

6 **12. COURT APPROVAL**

7 **12.1** CEH will comply with the settlement notice provisions of Health and
8 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003. If this
9 Consent Judgment is not approved by the Court, it shall be of no further force or effect.

10 **13. EXECUTION AND COUNTERPARTS**

11 **13.1** The stipulations to this Consent Judgment may be executed in counterparts
12 and by means of facsimile, which taken together shall be deemed to constitute one document.

13 **14. AUTHORIZATION**

14 **14.1** Each signatory to this Consent Judgment certifies that he or she is fully
15 authorized by the party he or she represents to stipulate to this Consent Judgment and to enter into
16 and execute the Consent Judgment on behalf of the party represented and legally bind that party.
17 The undersigned have read, understand and agree to all of the terms and conditions of this
18 Consent Judgment. Except as explicitly provided herein, each party is to bear its own fees and
19 costs.

20 **AGREED TO:**

21 **CENTER FOR ENVIRONMENTAL**
22 **HEALTH**

MAPA SPONTEX, INC.

23 

24 _____
25 Charlie Pizarro, Assistant Director
26 Center for Environmental Health

27 _____
28 [Name]

[Title]

Dated:

8/13/10

Dated:

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For Defendant:

Christopher Locke
Farella Braun + Martel LLP
235 Montgomery Street, 17th Floor
San Francisco, CA 94104

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

MAPA SPONTEX, INC.

Charlie Pizarro, Assistant Director
Center for Environmental Health



Marc Boussemart

President

Dated:

Dated: 08/17/2010

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ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and MAPA SPONTEX, 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