

1 SETTLEMENT AGREEMENT

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3 **1. INTRODUCTION**

4 **1.1** SAS Safety Corporation (“SAS”) is a corporation that employs 10 or more
5 persons and manufactured, distributed and/or sold vinyl gloves in the State of California (the
6 ”Products”).

7 **1.2** On or about July 2, 2010, CEH served SAS and the appropriate public
8 enforcement agencies with the requisite 60-day Notice (the “Notice”) alleging that SAS was in
9 violation of Proposition 65. CEH’s Notice alleges that SAS exposed people who use or otherwise
10 handle the Products to di(2-ethylhexyl) phthalate (“DEHP”), a chemical listed by the State of
11 California as known to cause cancer, birth defects and other reproductive harm, without first
12 providing clear and reasonable warning to such persons regarding the carcinogenicity and
13 reproductive toxicity of DEHP. The Notice alleges that SAS’s conduct violates Health & Safety
14 Code’s 25249.6, the warning provision of Proposition 65. SAS disputes such allegations and
15 asserts that all of its products are safe and comply with all applicable laws.

16 **1.3** The Parties enter into this Agreement pursuant to a settlement of
17 the disputed claims between the Parties as alleged described herein. By executing Agreement, the
18 Parties do not admit any facts or conclusions of law. It is the Parties’ intent that nothing in this
19 Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue
20 of law or violation of law, nor shall compliance with the Agreement constitute or be construed as
21 an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law.
22 Nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument or
23 defense the Parties may have in this or any other or future legal proceedings.

24 **2. COMPLIANCE - REFORMULATION**

25 **2.1 Reformulation Standard – Removal of DEHP.** As of the date of
26 execution of this Agreement (the “Compliance Date”), SAS shall not manufacture, distribute,
27 ship, or sell in California, or cause to be manufactured, distributed or sold in California, any
28 Product that contains in excess of trace amounts of DEHP. For purposes of this Agreement only,

1 “in excess of trace amounts” is more than 600 parts per million (“ppm”). In reformulating the
2 Products to remove DEHP, SAS may not use butyl benzyl phthalate (“BBP”), di-n-hexyl
3 phthalate (“DnHP”), di-n-butyl phthalate (“DBP”) or di-isodecyl phthalate (“DIDP”) as identified
4 and listed under Proposition 65 in excess of trace amounts as defined above. DEHP, BBP, DnHP,
5 DBP and DIDP are together referred to herein as “Listed Phthalates.”

6 **2.2 Certification From Suppliers.** For so long as SAS manufactures,
7 distributes, or ships Products for sale in California, SAS shall issue specifications to its suppliers
8 requiring that the Products it intends to ship to California shall not contain DEHP or any other
9 Listed Phthalates in excess of trace amounts. SAS shall obtain written certification from its
10 suppliers of such Products certifying that they do not contain DEHP.

11 **2.3 SAS Testing.** In order to ensure compliance with the requirements of
12 Section 2.1, SAS shall cause to be conducted the testing described below to confirm that the
13 Products intended for sale in California do not contain in excess of trace amounts of DEHP. All
14 testing pursuant to this section shall be performed by an independent laboratory in accordance
15 with both of the following test protocols: (1) EPA SW8270C; and (2) EPA SW3580A (together
16 referred to as the “Test Protocols”). At the written request of CEH, the results of the testing
17 performed pursuant to this section shall be made available to CEH on a confidential basis.

18 **2.3.1 Testing Frequency.** For the first two orders of Products from
19 each of SAS’s suppliers after the Compliance Date, SAS shall cause its supplier to randomly
20 select and test three (3) total Products intended for sale in California at a laboratory certified to
21 test under the federal Consumer Product Safety Improvement Act (“CPSIA”). Following the
22 testing of the first two orders as described above, SAS shall, beginning on January 1, 2012, at
23 least once annually for each supplier of Products, randomly select and test three (3) of the total
24 Products purchased in that calendar year intended for sale in California from each supplier of the
25 Products. The annual testing of three randomly selected samples shall be conducted one each a
26 minimum of two months apart from separate orders of the Products. Should SAS stop selling or
27 causing to be sold Products in California, the testing requirements of Section 2.3 shall cease to
28 apply. However, should SAS begin such sales again, SAS shall begin testing again, and shall

1 apply the testing frequency set forth in 2.3.1 as though the first shipment following SAS's re-
2 initiation of Product sales in California were the first one following the Compliance Date. SAS
3 shall have no further obligation to either test products or require testing by its suppliers after
4 December 31, 2013.

5 **2.3.2 Products That Contain Listed Phthalates Pursuant to SAS's**
6 **Testing.** If the results of the testing required pursuant to Section 2.3 show Listed Phthalates in
7 excess of trace amounts in a Product, SAS shall: (1) refuse to accept all of the Products that were
8 purchased under the particular purchase order that are intended for sale in California; (2) send a
9 notice to the supplier explaining that such Products do not comply with the suppliers'
10 certification; and (3) apply the testing frequency set forth in 2.3.1 as though the next shipment
11 from the supplier were the first one following the Compliance Date.

12 **2.4 Testing by CEH.** CEH intends to conduct confirmatory testing of the
13 Products. Any such testing shall be conducted by CEH at its expense at an independent
14 laboratory, in accordance with both of the Test Protocols. In the event that CEH's testing
15 demonstrates that the Products manufactured after the Compliance Date contain Listed Phthalates
16 in excess of trace amounts subsequent to the Compliance Date, CEH shall inform SAS of the test
17 results, including information sufficient to permit SAS to identify the Product(s). Upon written
18 request, CEH will also provide copies of any test results on the Products it is relying on to SAS,
19 along with the Product packaging and, if requested by SAS, a sample of any remaining, untested
20 Product from the same package as the allegedly non-compliant Product. SAS shall, within 30
21 days following such notice, provide CEH, at the address listed in Section 9, with the certification
22 and testing information demonstrating its compliance with Sections 2.2 and 2.3 of this Consent
23 Judgment. If SAS fails to provide CEH with information demonstrating that it complied with
24 Sections 2.2 and/or 2.3, or otherwise fails to identify an error in CEH's test results which error
25 caused CEH to erroneously conclude that a Product intended for sale in California did not comply
26 with this Consent Judgment, SAS shall be liable for stipulated payments in lieu of penalties
27 pursuant to Section 2.4.1 below for Products manufactured after the Compliance Date for which
28 CEH produces tests demonstrating the presence of Listed Phthalates in the Products. The

1 payments shall be made to CEH and used for the purposes described in Section 3.2. If SAS
2 provides certification and testing information demonstrating its compliance with Sections 2.1, 2.2
3 and 2.3, SAS shall not be liable for any such stipulated payments or for any violation of this
4 Consent Judgment.

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 SAS selling a Product containing Listed Phthalates
8 manufactured after the Compliance Date:

9	First Occurrence:	\$250
10	Second Occurrence:	\$500
11	Third Occurrence:	\$750
12	Thereafter:	\$1,000

13 CEH shall have the burden of proving noncompliance. As used in this section 2.4.1, an
14 “Occurrence” is the sale of any number of Products in California from the same lot containing
15 Listed Phthalates.

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17 **2.5 Products in the Stream of Commerce.** SAS’s Products that have been
18 manufactured, distributed, shipped, sold, or that are otherwise in the stream of commerce prior to
19 the Compliance Date shall be released from any claims that were brought or that could be brought
20 by CEH in the Complaint, as though they were Covered Claims within the meaning of Section 6,
21 below. As a result, the stipulated payments and other obligations of this Section 2 do not apply to
22 these Products.

23 **3. SETTLEMENT PAYMENTS**

24 **3.1 Civil Penalty.** SAS shall pay \$1,000 as a civil penalty pursuant to Health
25 and Safety Code § 25249.7(b). The penalty shall be made payable to CEH, which will apportion
26 the penalty in accordance with Health and Safety Code § 25249.12.

27 **3.2 Monetary Payment in Lieu of Penalty.** SAS shall pay to CEH
28 \$4,500 in lieu of any additional civil penalty pursuant to Health and Safety Code § 25249.7(b)

1 and 11 California Code of Regulations §3203(b). CEH shall use such funds to continue its work
2 protecting people from exposures to toxic chemicals. As part of this work, CEH intends to
3 conduct periodic testing of the Products as set forth in Section 2.4. The payment required under
4 this section shall be made payable to CEH.

5 **3.3 Attorneys' Fees and Costs.** SAS shall pay \$9,500 to reimburse CEH and
6 its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any other costs
7 incurred as a result of investigating, bringing this matter to SAS's attention, litigating and
8 negotiating a settlement in the public interest. The payment required under this section shall be
9 made payable to Lexington Law Group.

10 **3.4 Delivery of payments.** All payments made pursuant to this Section 3 shall
11 be delivered to the Lexington Law Group at the address set forth in Section 9.1 and shall be
12 delivered within 14 days of the Compliance Date.

13 **4. MODIFICATION OF AGREEMENT**

14 **4.1** This Agreement may only be modified by written agreement of CEH and
15 SAS.

16 **4.2** In the event that CEH in a subsequent settlement of a Proposition 65 action
17 involving vinyl gloves shall define "in excess of trace amounts" of DEHP (or any Phthalate
18 identified as a Listed Phthalate in this Agreement) to be a figure higher than 600 ppm in the vinyl
19 gloves, then this agreement shall be modified to substitute such higher figure
20 for the 600 ppm reformulation standard in Section 2.1.

21 **5. APPLICATION OF AGREEMENT**

22 **5.1** This Agreement shall apply to and be binding upon the Parties hereto, their
23 divisions, subdivisions and subsidiaries, and the successors or assigns of any of them.

24 **6. ENFORCEMENT OF AGREEMENT**

25 **6.1** Any action based on an alleged breach of this Agreement shall be brought
26 in the Superior Court of California in San Francisco County. For purposes of this Agreement
27 alone, the Parties agree that the Superior Court of California in San Francisco County has subject
28 matter jurisdiction over any disputes arising from this Agreement and personal jurisdiction over

1 each of the Parties, and that venue is proper in the County of San Francisco. In any action to
2 enforce the terms of this Agreement, the prevailing party shall be entitled to recover its
3 reasonable attorneys' fees and costs associated with such action.

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

5 **7.1** This Agreement is a full, final and binding resolution between CEH, acting
6 on behalf of itself and in the public interest, and SAS and its parents, shareholders, divisions,
7 subdivisions, subsidiaries, partners, affiliates and their successors and assigns ("SAS Releasees"),
8 and those to whom SAS Releasees distribute or sell the Products, including but not limited to
9 distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees
10 ("Downstream SAS Releasees"), of any violation of Proposition 65 or any other statutory or
11 common law claims that have been or could have been asserted in the public interest against SAS,
12 SAS Releasees, and Downstream SAS Releasees regarding the alleged failure to warn about
13 exposures to DEHP resulting from any Products manufactured, distributed or sold by SAS on or
14 prior to the date of execution of this Agreement. ("Covered Claims").

15 **7.2** CEH, its directors, officers, employees and attorneys, for themselves and
16 acting on behalf of the public interest pursuant to Health & Safety Code § 25249.7(d), hereby
17 release, waive, and forever discharge any and all Covered Claims that have been or could have
18 been asserted in the public interest against SAS, SAS Releasees, and Downstream SAS
19 Releasees.

20 **7.3** Compliance with the terms of this Agreement by SAS and its SAS
21 Releasees shall constitute compliance by that SAS, its SAS Releasees and their Downstream SAS
22 Releasees with Proposition 65 for purposes of exposures to DEHP or any Listed Phthalates from
23 the Products.

24 **8. SEVERABILITY**

25 **8.1** In the event that any of the provisions of this Agreement are held by a court
26 to be unenforceable, the validity of the enforceable provisions shall not be adversely affected.

27 **9. GOVERNING LAW**

28 **9.1** The terms of this Agreement shall be governed by the laws of the State of

1 California.

2 **10. PROVISION OF NOTICE**

3 **10.1** All notices required pursuant to this Agreement and correspondence shall
4 be sent to the following:

5 For CEH:

6 Mark N. Todzo
7 Lexington Law Group, LLP
8 1627 Irving Street
9 San Francisco, CA 94122

8 For SAS:

9 Ken Watson, President
10 SAS Safety Corp.
11 3031 Gardenia Ave
12 Long Beach, CA 90807

11 and

12 Walter J. Lipsman
13 Morris Polich & Purdy LLP
14 1055 West 7th Street, 24th Floor
15 Los Angeles, CA 90017

15 **11. REPORTING TO THE ATTORNEY GENERAL**

16 **11.1** CEH will comply with the settlement notice provisions of Health and
17 Safety Code § 25249.7(f) and Title 11 of the California Code of Regulations § 3003.

18 **12. EXECUTION AND COUNTERPARTS**

19 **12.1** The stipulations to this Agreement may be executed in counterparts and by
20 means of facsimile, which taken together shall be deemed to constitute one document.

21 **13. AUTHORIZATION**

22 **13.1** Each signatory to this Agreement certifies that he or she is fully authorized
23 by the party he or she represents to stipulate to this Agreement and to enter into and execute the
24 Agreement on behalf of the party represented and legally bind that party. The undersigned have
25 read, understand and agree to all of the terms and conditions of this Agreement. Except as
26 explicitly provided herein, each party is to bear its own fees and costs.

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro, Assistant Director
Center for Environmental Health

Dated: 3/31/2011

SAS SAFETY CORPORATION

Ken Watson, President

Dated: _____

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AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH

Charlie Pizarro, Assistant Director
Center for Environmental Health

Dated: _____

SAS SAFETY CORPORATION



Ken Watson, President

Dated: 3-24-11