

1 LEXINGTON LAW GROUP
Mark N. Todzo, State Bar No. 168389
2 Howard Hirsch, State Bar No. 213209
Lisa Burger, State Bar No. 239676
3 1627 Irving Street
San Francisco, CA 94122
4 Telephone: (415) 759-4111
Facsimile: (415) 759-4112

5 Attorneys for Plaintiff
6 CENTER FOR ENVIRONMENTAL HEALTH

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

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

13 Plaintiff,)

14 v.)

15)
16 ROYAL PAPER PRODUCTS INC, et al.,)

17 Defendants.)
18 _____)

Case No. CGC-11-509403

**[PROPOSED] CONSENT JUDGMENT
RE: ROYAL PAPER PRODUCTS, INC.**

1 **1. INTRODUCTION**

2 **1.1** On March 22, 2011, 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. Royal Paper Products, Inc., et al.*, San Francisco County Superior
5 Court Case Number CGC-11-509403 (the “Action”), for civil penalties and injunctive relief
6 pursuant to the provisions of Cal. Health & Safety Code § 25249.5, *et seq.* (“Proposition 65”).
7 The Complaint in the Action names Royal Paper Products, Inc. (“Defendant”) as a defendant.
8 CEH and Defendant are referred to herein individually as a “Party” and collectively as the
9 “Parties.”

10 **1.2** Defendant is a corporation that employs 10 or more persons and
11 manufactured, distributed and/or sold vinyl gloves in California (the “Products”).

12 **1.3** On or about October 13, 2010, CEH served Defendant and the appropriate
13 public enforcement agencies with the requisite 60-day Notice (the “Notice”) alleging that
14 Defendant was in violation of Proposition 65. CEH’s Notice and the Complaint in the Action
15 allege that Defendant exposes people who use or otherwise handle the Products to di(2-
16 ethylhexyl) phthalate (“DEHP”), a chemical known to the State of California to cause cancer,
17 birth defects and other reproductive harm, without first providing clear and reasonable warning
18 to such persons regarding the carcinogenicity and reproductive toxicity of DEHP. The Notice
19 and Complaint allege that Defendant’s conduct violates Health & Safety Code § 25249.6, the
20 warning provision of Proposition 65. Defendant disputes such allegations and asserts that all of
21 its products are safe and comply with all applicable laws.

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

28

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.** Upon mutual execution
12 of this Agreement (the “Compliance Date”), Defendant shall not manufacture, distribute, ship, or
13 sell, or cause to be manufactured, distributed or sold, any Product that contains in excess of trace
14 amounts of DEHP. For purposes of this Consent Judgment only, “in excess of trace amounts” is
15 more than 600 parts per million (“ppm”). In reformulating the Products to remove DEHP,
16 Defendant may not use butyl benzyl phthalate (“BBP”), di-n-hexyl phthalate (“DnHP”), di-n-
17 butyl phthalate (“DBP”) or di-isodecyl phthalate (“DIDP”) in excess of trace amounts. DEHP,
18 BBP, DnHP, DBP and DIDP are together referred to herein as “Listed Phthalates.”

19 **2.2 Certification From Suppliers.** Defendant shall issue specifications to its
20 suppliers requiring that the Products shall not contain DEHP or any other Listed Phthalate in
21 excess of trace amounts. Defendant shall obtain written certification from its suppliers of the
22 Products certifying that the Products do not contain any Listed Phthalate in excess of trace
23 amounts.

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 testing to confirm that
26 Products sold do not contain any Listed Phthalate in excess of trace amounts. Testing shall be
27 conducted in compliance with Section 2.1. All testing pursuant to this Section shall be
28 performed by an independent laboratory in accordance with one of the following test protocols:

1 (1) EPA SW8270C and EPA SW3580A, or (2) ASTM D3421-75 (referred to as the “Test
2 Protocols”). At the request of CEH, the results of the testing performed pursuant to this section
3 shall be made available to CEH on a confidential basis.

4 **2.3.1 Testing Frequency.** For each of the first two orders of Products
5 purchased from each of Defendant’s suppliers after the Compliance Date, but within calendar
6 year 2011, Defendant shall randomly select and test one glove from each such supplier of the
7 Products intended for sale. Thereafter, beginning with calendar year 2012, Defendant shall, once
8 each year, randomly select and test one glove from each of its suppliers of the Products.
9 Defendant has the right to conduct additional testing, but is not obligated by the terms of this
10 consent order to do so.

11 **2.3.2 Products That Contain Listed Phthalates Pursuant to**
12 **Defendant’s Testing.** If the results of the testing required pursuant to Section 2.3 show Listed
13 Phthalates in excess of trace amounts in a Product, Defendant shall: (1) refuse to accept all of the
14 Products that were purchased under the particular purchase order; (2) send a notice to the
15 supplier explaining that such Products do not comply with the suppliers’ certification; and (3)
16 apply the testing frequency set forth in Section 2.3.1 as though the next shipment from the
17 supplier were the first one following the Compliance Date.

18 **2.4 Confirmatory Testing by CEH.** CEH intends to conduct confirmatory
19 testing of the Products. Any such testing shall be conducted by CEH at an independent
20 laboratory, in accordance with either of the Test Protocols. In the event that CEH’s testing under
21 either of the Testing Protocols demonstrates that the Products contain Listed Phthalates in excess
22 of trace amounts subsequent to the Compliance Date, CEH shall inform Defendant in a
23 reasonably prompt manner of the test results, including information sufficient to permit
24 Defendant to identify the Product(s). Defendant shall, within 30 days following such notice,
25 provide CEH, at the address listed in Section 11.1, with the certification and testing information
26 demonstrating its compliance with Sections 2.2 and 2.3 of this Consent Judgment. If Defendant
27 fails to provide CEH with information demonstrating that it complied with Sections 2.2 and/or
28 2.3, Defendant shall be liable for stipulated payments in lieu of penalties for Products for which

1 CEH produces tests demonstrating the presence of Listed Phthalates in excess of trace amounts
2 in the Products. The payments shall be made to CEH and used for the purposes described in
3 Section 3.2.

4 **2.4.1 Stipulated Payments In Lieu of Penalties.** If stipulated payments
5 in lieu of penalties are warranted under Section 2.4, the stipulated payment amount shall be as
6 follows for each Occurrence of Defendant selling a Product containing Listed Phthalates in
7 excess of trace amounts after the Compliance Date:

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

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

22 **3. SETTLEMENT PAYMENTS**

23 **3.1 Penalty.** Defendant shall pay to CEH \$1,000 as a penalty pursuant to
24 Health and Safety Code § 25249.7(b). CEH shall apportion such payment in accordance with
25 Health and Safety Code §25249.12.

26 **3.2 Monetary Payment in Lieu of Penalty.** Defendant shall pay to CEH
27 \$4,500 in lieu of any additional penalty pursuant to Health and Safety Code § 25249.7(b). CEH
28 shall use such funds to continue its work protecting people from exposures to toxic chemicals.

1 As part of this work, CEH intends to conduct periodic testing of the Products as set forth in
2 Section 2.4. The payment required under this Section shall be made payable to CEH

3 **3.3 Attorneys' Fees and Costs.** Defendant shall pay \$9,500 to reimburse
4 CEH and its attorneys for their reasonable investigation fees and costs, attorneys' fees, and any
5 other costs incurred as a result of investigating, bringing this matter to Defendant's attention,
6 litigating and negotiating a settlement in the public interest. The payment required under this
7 Section shall be made payable to Lexington Law Group.

8 **3.4 Delivery of Payments.** All payments made pursuant to this Section 3
9 shall be delivered to the Lexington Law Group at the address set forth in Section 11.1 and shall
10 be delivered within 10 days of entry of this Consent Judgment.

11 **4. MODIFICATION OF CONSENT JUDGMENT**

12 **4.1** This Consent Judgment may be modified by written agreement of CEH
13 and Defendant, or upon motion of CEH or Defendant as provided by law.

14 **5. ENFORCEMENT OF CONSENT JUDGMENT**

15 **5.1** CEH may, by motion or application for an order to show cause, enforce
16 the terms and conditions contained in this Consent Judgment. The prevailing party on any such
17 motion or application, shall be entitled to recover its reasonable attorneys' fees and costs
18 associated with the motion or application.

19 **6. APPLICATION OF CONSENT JUDGMENT**

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

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

24 **7.1** This Consent Judgment is a full, final and binding resolution between
25 CEH and Defendant of any violation of Proposition 65 that was or could have been asserted in
26 the Complaint against Defendant (including any claims that could be asserted in connection with
27 any of the Products covered by this Consent Judgment) or its parents, subsidiaries, affiliates,
28 divisions, directors, officers, employees, agents, attorneys, distributors, wholesalers, customers or

1 retailers (collectively, “Defendant Releasees”) based on failure to warn about alleged exposures
2 to DEHP resulting from any Products manufactured, distributed or sold by Defendant (“Covered
3 Claims”) on or prior to the date of entry of this Consent Judgment. CEH, its directors, officers,
4 employees and attorneys hereby release all Covered Claims against Defendant Releasees.
5 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
6 with regard to exposures to Listed Phthalates from the Products sold after the Compliance Date.
7 Any alleged violation of Proposition 65 with regard to exposures to Listed Phthalates from the
8 Products shall be resolved before the Superior Court of the State of California for the County of
9 San Francisco that is issuing this Consent Judgment (the “Court”).

10 **8. SEVERABILITY**

11 **8.1** In the event that any of the provisions of this Consent Judgment are held
12 by 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 and to adjudicate any claims pursuant to Proposition 65
20 regarding exposures to Listed Phthalates from the Products, made by CEH, or by any other
21 claimant.

22 **11. PROVISION OF NOTICE**

23 **11.1** All notices required pursuant to this Consent Judgment and
24 correspondence shall be sent to the following:

25 For CEH:

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

For Defendant:

Michael J. Partos
Cozen O'Connor
Suite 3700
601 S. Figueroa Street
Los Angeles, California 90017

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. If this Consent Judgment is not approved by the Court, it shall be of no force or effect.

13. EXECUTION AND COUNTERPARTS

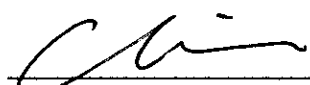
13.1 The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

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

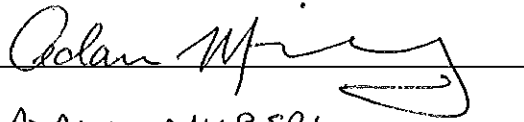


Charlie Pizarro
Associate Director

Dated: 5/12/11

1 ROYAL PAPER PRODUCTS, INC.

2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28



Dated: 5-10-11

ADAM MILBERG

[Name]

DIRECTOR IMPORT PROGRAM

[Title]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER AND JUDGMENT

Based upon the stipulated Consent Judgment between CEH and Defendant Royal Paper Products, 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