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CENTER FOR ENVIRONMENTAL HEALTH

ENDORSED
FILED
ALAMEDA COUNTY

APR 15 2014

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

SUPERIOR COURT FOR THE STATE OF CALIFORNIA
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL
HEALTH, a non-profit corporation,

Plaintiff,

v.

BRITAX CHILD SAFETY, INC., *et al.*,

Defendants.

Case No. RG-13683725

~~[PROPOSED]~~ CONSENT
JUDGMENT RE: SAC
ACQUISITION LLC

1. INTRODUCTION

1.1. This Consent Judgment is entered into by Plaintiff Center for Environmental Health, a non-profit corporation ("CEH"), and Defendant Sac Acquisition LLC ("Defendant") to settle claims asserted by CEH against Defendant as set forth in the operative Complaint in the matter *Center for Environmental Health v. Britax Child Safety, Inc., et al.*, Alameda County

1 Superior Court Case No. RG-13683725 (the "Action"). CEH and Defendant are referred to
2 collectively as the "Parties."

3 1.2. For purposes of this Consent Judgment only, the Parties stipulate that, on June 18,
4 2013, CEH served a "Notice of Violation" (the "First Notice") relating to the California Safe
5 Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") on Defendant, the
6 California Attorney General, the District Attorneys of every County in the State of California, and
7 the City Attorneys for every City in State of California with a population greater than 750,000.
8 The First Notice alleges violations of Proposition 65 with respect to the presence of tris (1,3-
9 dichloro-2-propyl) phosphate ("TDCPP") in foam-cushioned upholstered furniture manufactured,
10 distributed, and/or sold by Defendant.

11 1.3. For purposes of this Consent Judgment only, the Parties stipulate that, on January
12 27, 2014, CEH served a second "Notice of Violation" (the "Second Notice") relating to
13 Proposition 65 on Defendant, the California Attorney General, the District Attorneys of every
14 County in the State of California, and the City Attorneys for every City in State of California with
15 a population greater than 750,000. The Second Notice alleges violations of Proposition 65 with
16 respect to the presence of TDCPP in pre-consumer recycled polyurethane foam manufactured,
17 distributed, and/or sold by Defendant as a refill for foam-cushioned upholstered furniture. The
18 First and Second Notices are referred to collectively as the "Notices."

19 1.4. Upon entry of this Consent Judgment, the operative Complaint in this Action shall
20 be deemed amended to include allegations as to Defendant only as to TDCPP in shredded, pre-
21 consumer recycled polyurethane foam used as a refill for foam-cushioned upholstered furniture,
22 manufactured, distributed, and/or sold by Defendant in California.

23 1.5. Defendant is a corporation that employs ten (10) or more persons and that
24 manufactures, distributes, and/or sells Covered Products (as defined herein) in the State of
25 California. Some of Defendant's Covered Products, such as its "Sactionals" line of upholstered
26 furniture, have cushioned portions made from polyurethane foam that is sourced new from
27 vendors. Others of Defendant's Covered Products, such as its "Sac" line of upholstered furniture
28 and loose refill foam that it sells for the "Sac" line, are filled with or composed of shredded

1 polyurethane foam materials purchased from other furniture manufacturers, which is leftover
2 from the production of that furniture.

3 1.6. For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
4 Court has jurisdiction over the allegations of violations contained in the Notices and Complaint
5 and personal jurisdiction over Defendant as to the acts alleged in the Complaint; (ii) venue is
6 proper in the County of Alameda; and (iii) this Court has jurisdiction to enter this Consent
7 Judgment as a full and final resolution of all claims which were or could have been raised in the
8 Complaint based on the facts alleged in the Notices and/or Complaint with respect to Covered
9 Products manufactured, distributed, and/or sold by Defendant.

10 1.7. The Parties enter into this Consent Judgment as a full and final settlement of all
11 claims which were or could have been raised in the Complaint arising out of the facts or conduct
12 related to Defendant alleged therein. By execution of this Consent Judgment and agreeing to
13 comply with its terms, the Parties do not admit any fact, conclusion of law, or violation of law,
14 nor shall compliance with the Consent Judgment constitute or be construed as an admission by
15 the Parties of any fact, conclusion of law, or violation of law. Defendant denies the material,
16 factual, and legal allegations in the Notices and Complaint and expressly denies any wrongdoing
17 whatsoever. Except as specifically provided herein, nothing in this Consent Judgment shall
18 prejudice, waive, or impair any right, remedy, argument, or defense either Party may have in this
19 or any other pending or future legal proceedings. This Consent Judgment is the product of
20 negotiation and compromise and is accepted by the Parties solely for purposes of settling,
21 compromising, and resolving issues disputed in this Action.

22 2. DEFINITIONS

23 2.1. "Chemical Flame Retardant" means any halogenated or phosphorous-based
24 chemical compound used for the purpose of resisting or retarding the spread of fire. "Chemical
25 Flame Retardant" does not include any chemical that has been rated as a Benchmark 4 chemical
26 pursuant to Clean Production Action's GreenScreen ([http://www.cleanproduction.org/
27 Green.Greenscreen.php](http://www.cleanproduction.org/Green.Greenscreen.php)).

1 2.2. “Covered Product” means (a) foam-cushioned upholstered furniture, and (b)
2 shredded, pre-consumer recycled polyurethane foam used as a refill for foam-cushioned
3 upholstered furniture, manufactured, distributed, and/or sold by Defendant in California.

4 2.3. “Effective Date” means the date on which the Court enters this Consent Judgment.

5 2.4. “Listed Chemical Flame Retardants” means Tris(1,3-dichloro-2-propyl) phosphate
6 (“TDCPP”), Tris(2-chloroethyl) phosphate (“TCEP”), and Tris(2,3-dibromopropyl) phosphate
7 (“TDBPP”).

8 2.5. “Manufacture Date” means the date the Covered Product was manufactured, which
9 may be indicated on a tag attached to the Covered Product.

10 2.6. “Shredded Foam Product” means a Covered Product filled with or composed of
11 shredded, pre-consumer recycled polyurethane foam.

12 2.7. “TB 117-2013” means Technical Bulletin 117-2013, entitled “Requirements, Test
13 Procedure and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered
14 Furniture,” incorporated by reference into regulatory amendments published on November 21,
15 2013 by the California Bureau of Electronic and Appliance Repair, Home Furnishings and
16 Thermal Insulation.

17 2.8. “Treated” means the addition or application of any Chemical Flame Retardant to
18 any polyurethane foam, cushioning, or padding used as filling material in any Covered Product.

19 **3. INJUNCTIVE RELIEF**

20 3.1. **Reformulation of Covered Products Sold by Defendant.** Subject to
21 Defendant’s option under Section 3.2 below regarding Shredded Foam Products, Defendant shall
22 comply with the following requirements to reformulate the Covered Products so as to reduce or
23 eliminate exposures to Chemical Flame Retardants arising from the use of the Covered Products.

24 3.1.1. **Final Compliance – All Chemical Flame Retardants.** As of the
25 Effective Date, Defendant shall not distribute, sell, or offer for sale in California any Covered
26 Product that has been Treated with any Chemical Flame Retardant and which has a Manufacture
27 Date that is on or later than the Effective Date.

28

1 **3.1.1.1. Specification To and Certification From Suppliers.** To
2 ensure compliance with the reformulation provisions of Section 3.1.1, following the Effective
3 Date, Defendant shall directly or through its supply chain issue specifications to its suppliers of
4 polyurethane foam, cushioning, or padding used as filling material in any Covered Product
5 requiring that such components have not been Treated with any Chemical Flame Retardant in
6 accordance with the requirements of Section 3.1.1. Defendant shall obtain and maintain written
7 certification(s) from its suppliers of polyurethane foam, cushioning, or padding confirming that
8 all such foam received by Defendant for distribution in California has not been Treated with any
9 Chemical Flame Retardant. Defendant shall not be deemed in violation of the requirements of
10 this Section 3.1.1 for any Covered Product to the extent: (a) it has relied on a written certification
11 from its vendor that supplied a Covered Product or the polyurethane foam, cushioning, or padding
12 used as filling material in the Covered Product that such Covered Product, foam, cushioning, or
13 padding is made with only foam that has not been Treated with any Chemical Flame Retardant,
14 and/or, if such certification is not relied on or has previously been demonstrated to be invalid, (b)
15 it has obtained a test result from an independent third party certified laboratory reporting that the
16 Covered Product's polyurethane foam, cushioning, or padding used as filling material has not
17 been Treated with any Chemical Flame Retardant.

18 **3.1.2. Interim Compliance for Products in Inventory – Listed Chemical**
19 **Flame Retardants.** Any Covered Product with a Manufacture Date that is earlier than the
20 Effective Date, that contains polyurethane foam which has been Treated with any Listed
21 Chemical Flame Retardant, and that is distributed, sold, or offered for sale by Defendant in
22 California after the Effective Date shall be accompanied by a Clear and Reasonable Warning that
23 complies with Section 3.2.2.

24 **3.2. Warnings for Covered Products Sold by Defendant.**

25 **3.2.1. Warning Option for Shredded Foam Products.** As an alternative to
26 reformulating Shredded Foam Products as specified in Section 3.1, as of the Effective Date, any
27 Shredded Foam Product in which the polyurethane foam has been Treated with any Listed
28 Chemical Flame Retardant may be distributed, sold, or offered for sale by Defendant in California

1 if accompanied by a Clear and Reasonable Warning that complies with Section 3.2.2. A Clear
2 and Reasonable Warning may only be provided for Shredded Foam Products that Defendant
3 reasonably believes to contain any Listed Chemical Flame Retardant.

4 3.2.1.1. **Specification to Suppliers.** Following the Effective Date,
5 Defendant shall contact each of its suppliers of polyurethane foam, cushioning, or padding used
6 as filling material in any Shredded Foam Product distributed, sold, or offered for sale in
7 California and instruct each such supplier to use reasonable efforts to provide only polyurethane
8 foam that has not been Treated with any Listed Chemical Flame Retardant. This Section 3.2.1.1
9 creates no obligation for Defendant to use only foam that has not been Treated with any Listed
10 Chemical Flame Retardant in its Shredded Foam Products distributed, sold, or offered for sale in
11 California.

12 3.2.2. **Proposition 65 Warnings.** A Clear and Reasonable Warning under this
13 Consent Judgment shall state:

14 WARNING: This product contains tris(1,3-dichloro-2-propyl)
15 phosphate ("TDCPP") [and/or tris(2-chloroethyl) phosphate
16 ("TCEP") and/or tris(2,3-dibromopropyl) phosphate ("TDBPP")],
 a chemical[s] known to the State of California to cause cancer.

17 A Clear and Reasonable Warning shall not be preceded by, surrounded by, or include any
18 additional words or phrases that contradict, obfuscate, or otherwise undermine the warning. The
19 warning statement shall be prominently displayed on the Covered Product or the packaging of the
20 Covered Product with such conspicuousness, as compared with other words, statements, or
21 designs as to render it likely to be read and understood by an ordinary individual prior to sale.
22 For internet, catalog, or any other sale where the consumer is not physically present and cannot
23 see a warning displayed on the Covered Product or the packaging of the Covered Product prior to
24 purchase or payment, the warning statement shall be displayed in such a manner that it is likely to
25 be read and understood prior to the authorization of or actual payment.

26 3.3. **Warnings for Covered Products in the Stream of Commerce.** In an effort to
27 ensure that consumers receive clear and reasonable warnings in compliance with Proposition 65
28 for Covered Products that have not been reformulated pursuant to Section 3.1 or labeled in

1 accordance with Section 3.2, within 30 days following the Effective Date, Defendant shall
2 provide warning materials by certified mail to each of its California retailers or distributors to
3 whom Defendant reasonably believes it sold Covered Products that contained or may have
4 contained Listed Chemical Flame Retardants. Such warning materials shall include a reasonably
5 sufficient number of hang tags or adhesive labels in order to permit the retailer or distributor to
6 place a warning tag or sticker on each Covered Product such customer has purchased from
7 Defendant. The hang tags or adhesive labels shall contain the warning language set forth in
8 Section 3.2.2. The warning materials shall also include a letter of instruction for the placement of
9 the hang tags and adhesive labels, and a Notice and Acknowledgment postcard.

10 3.4. Nothing in this Section 3 shall limit Defendant's ability to amend the language of
11 the Clear and Reasonable Warning to include other chemicals and/or to warn of potential
12 reproductive harm, as may become required by Proposition 65.

13 3.5. Defendant is under no obligation to continue providing a warning under this
14 Section 3 for a Listed Chemical Flame Retardant if at any time that Listed Chemical Flame
15 Retardant is removed from the list of chemicals published pursuant to Health & Safety Code §
16 25249.8.

17 4. PENALTIES AND PAYMENT

18 4.1. Defendant shall pay to CEH the total sum of sixty-five thousand dollars (\$65,000),
19 which shall be allocated as follows:

20 4.1.1. \$7,150 shall constitute a penalty pursuant to Cal. Health & Safety Code §
21 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health & Safety Code
22 § 25249.12.

23 4.1.2. \$9,750 shall constitute a payment in lieu of civil penalty pursuant to Cal.
24 Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such funds to
25 continue its work of educating and protecting the public from exposures to toxic chemicals,
26 including chemical flame retardants. CEH may also use a portion of such funds to monitor
27 compliance with this Consent Judgment and to purchase and test Defendant's products to confirm
28 compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH

1 will use four percent (4%) of such funds to award grants to grassroots environmental justice
2 groups working to educate and protect the public from exposures to toxic chemicals. The method
3 of selection of such groups can be found at the CEH website at www.ceh.org/justicefund.

4 4.1.3. \$48,100 shall constitute reimbursement of CEH's reasonable attorneys'
5 fees and costs.

6 4.2. The payments required under Sections 4.1.1-4.1.3 shall be made in three separate
7 checks, all to be delivered within 10 days following the Effective Date. The payments required
8 pursuant to Sections 4.1.1 and 4.1.2 shall each be made payable to CEH. The payment required
9 pursuant to Section 4.1.3 shall be made payable to Lexington Law Group. All checks shall be
10 delivered to Mark Todzo at Lexington Law Group at the address set forth in Section 8.

11 **5. ENFORCEMENT OF CONSENT JUDGMENT**

12 5.1. CEH may, by motion or application for an order to show cause before the Superior
13 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.
14 Prior to bringing any motion or application to enforce the requirements of Section 3 above, CEH
15 shall provide Defendant with a Notice of Violation and a copy of any test results which
16 purportedly support CEH's Notice of Violation. The Parties shall then meet and confer regarding
17 the basis for CEH's anticipated motion or application in an attempt to resolve it informally,
18 including providing Defendant a reasonable opportunity of at least thirty (30) days to cure any
19 alleged violation. Should such attempts at informal resolution fail, CEH may file its enforcement
20 motion or application. The prevailing party on any motion to enforce this Consent Judgment
21 shall be entitled to its reasonable attorney's fees and costs incurred as a result of such motion or
22 application. This Consent Judgment may only be enforced by the Parties.

23 **6. MODIFICATION OF CONSENT JUDGMENT**

24 6.1. This Consent Judgment may only be modified by written agreement of CEH and
25 Defendant, or upon motion of CEH or Defendant as provided by law.

26 **7. CLAIMS COVERED AND RELEASE**

27 7.1. This Consent Judgment is a full, final, and binding resolution between CEH acting
28 in the public interest and Defendant and Defendant's parents, officers, directors, shareholders,

1 divisions, subdivisions, subsidiaries, partners, affiliated companies, and their respective
2 successors and assigns (“Defendant Releasees”), and all entities to whom they distribute or sell or
3 have distributed or sold Covered Products including, but not limited to, distributors, wholesalers,
4 customers, retailers, franchisees, cooperative members, and licensees (“Downstream Defendant
5 Releasees”) of all claims alleged in the Complaint in this Action arising from any violation of
6 Proposition 65 that have been or could have been asserted in the public interest against Defendant
7 Releasees and the Downstream Defendant Releasees regarding the failure to warn about exposure
8 to TDCPP in the Covered Products manufactured, distributed, or sold by Defendant prior to the
9 Effective Date.

10 7.2. CEH, for itself, releases, waives, and forever discharges any and all claims which
11 were or could have been raised in the Complaint based on the facts alleged in the Notices and/or
12 Complaint with respect to Covered Products manufactured, distributed, and/or sold by Defendant
13 against Defendant Releasees and the Downstream Defendant Releasees arising from any violation
14 of Proposition 65 that have been or could have been asserted regarding the failure to warn about
15 exposure to TDCPP in connection with Covered Products manufactured, distributed, or sold by
16 Defendant prior to the Effective Date.

17 7.3. Compliance with the terms of this Consent Judgment by Defendant and the
18 Downstream Defendant Releasees shall constitute compliance with Proposition 65 by Defendant
19 and the Downstream Defendant Releasees with respect to any alleged failure to warn about
20 TDCPP in Covered Products manufactured, distributed, or sold by Defendant after the Effective
21 Date.

22 8. PROVISION OF NOTICE

23 8.1. When any Party is entitled to receive any notice under this Consent Judgment, the
24 notice shall be sent by first class and electronic mail as follows:

25 8.1.1. **Notices to Defendant.** The persons for Defendant to receive notices
26 pursuant to this Consent Judgment shall be:

27 Nancy Shalek
28 Sac Acquisition LLC

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700 Canal Street, 4th Floor
Stamford, CT 06902
nancy@lovesac.com

Nancy Sher Cohen
Proskauer Rose LLP
2049 Century Park East, Suite 3200
Los Angeles, CA 90067
ncohen@proskauer.com

8.1.2. **Notices to Plaintiff.** The persons for CEH to receive notices pursuant to this Consent Judgment shall be:

Rick Franco
Center for Environmental Health
2201 Broadway, Suite 302
Oakland, California 94612
rick@ceh.org

Mark Todzo
Lexington Law Group
503 Divisadero Street
San Francisco, CA 94117
mtodzo@lexlawgroup.com

8.2. Any Party may modify the person and address to whom the notice is to be sent by sending the other Parties notice by first class and electronic mail.

9. COURT APPROVAL

9.1. This Consent Judgment shall become effective on the Effective Date, provided however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and Defendant shall support approval of such Motion.

9.2. If this Consent Judgment is not entered by the Court, it shall be of no force or effect and shall not be introduced into evidence or otherwise used in any proceeding for any purpose.

10. GOVERNING LAW AND CONSTRUCTION

10.1. The terms and obligations arising from this Consent Judgment shall be construed and enforced in accordance with the laws of the State of California.

1 **11. ENTIRE AGREEMENT**

2 11.1. This Consent Judgment contains the sole and entire agreement and understanding
3 of CEH and Defendant with respect to the entire subject matter hereof, and any and all prior
4 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
5 merged herein and therein.

6 11.2. There are no warranties, representations, or other agreements between CEH and
7 Defendant except as expressly set forth herein. No representations, oral or otherwise, express or
8 implied, other than those specifically referred to in this Consent Judgment have been made by any
9 Party hereto.

10 11.3. No other agreements not specifically contained or referenced herein, oral or
11 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
12 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
13 any of the Parties hereto only to the extent that they are expressly incorporated herein.

14 11.4. No supplementation, modification, waiver, or termination of this Consent
15 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

16 11.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
17 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
18 such waiver constitute a continuing waiver.

19 **12. RETENTION OF JURISDICTION**

20 12.1. This Court shall retain jurisdiction of this matter to implement or modify the
21 Consent Judgment.

22 **13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT**

23 13.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized
24 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
25 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

26 **14. NO EFFECT ON OTHER SETTLEMENTS**

27 14.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim
28 against another entity on terms that are different from those contained in this Consent Judgment.

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15. COMPLIANCE WITH SETTLEMENT REPORTING REQUIREMENTS

15.1. CEH agrees to comply with the applicable reporting requirements, if any, referenced in California Health & Safety Code § 25249.7(f).

16. EXECUTION IN COUNTERPARTS

16.1. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile or scanned Portable Document Format (PDF) file, which taken together shall be deemed to constitute one document.

IT IS SO STIPULATED:

Dated: Feb 20, 2014

CENTER FOR ENVIRONMENTAL HEALTH

[Handwritten Signature]

CHARLIE PIZARRO

Printed Name

ASSOCIATE DIRECTOR

Title

Dated: 1/25, 2014

SAC ACQUISITION LLC

[Handwritten Signature]

NANCY SATTEL

Printed Name

CEO & PRESIDENT

Title

**IT IS SO ORDERED, ADJUDGED,
AND DECREED:**

APR 15

Dated: _____, 2014

GEORGE C. HERNANDEZ, JR.

Judge of the Superior Court of the State of
California, County of Alameda