



JUN 23 2014

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ENDORSED
FILED
ALAMEDA COUNTY

AUG 19 2014

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CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

9 Attorneys for Plaintiffs
10 ANTHONY E. HELD, PhD., P.E.

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

13 ANTHONY E. HELD, PhD., P.E.,
14 Plaintiff,

Case No. RG 14-715008

15 v.

~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT AS TO BLU DOT DESIGN &
MANUFACTURING, INC.

16 BLU DOT DESIGN &
17 MANUFACTURING, INC.; TARGET
18 CORPORATION; and DOES 1 -100,
inclusive,

Date: August 19, 2014
Time: 2:30 p.m.
Dept.: 17
Judge: Hon. George C. Hernandez

19 Defendants.

Reservation No. R-1521400

1 In the above-entitled action, plaintiff Anthony E. Held and defendant Blu Dot Design &
2 Manufacturing, Inc., having agreed through their respective counsel that Judgment be entered
3 pursuant to the terms of their settlement agreement in the form of a [Proposed] Consent
4 Judgment ("Consent Judgment"), and following this Court's issuance of an Order approving this
5 Proposition 65 settlement and Consent Judgment on _____, 2014,

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to California
7 Health & Safety Code § 25249.7(f)(4) and California Code of Civil Procedure § 664.6, Judgment
8 is entered in accordance with the terms of the Consent Judgment attached hereto as **Exhibit A**.
9 By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement under
10 Code of Civil Procedure § 664.6.

11
12 **IT IS SO ORDERED.**

13
14 **AUG 19 2014**

GEORGE C. HERNANDEZ, JR.

15 Dated: _____

16 JUDGE OF THE SUPERIOR COURT

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Exhibit A

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9
10 Attorneys for Plaintiff
ANTHONY E. HELD, PhD., P.E.

11
12 SUPERIOR COURT OF THE STATE OF CALIFORNIA
13 COUNTY OF ALAMEDA
14 UNLIMITED CIVIL JURISDICTION

15
16 ANTHONY E. HELD,
17 Plaintiff,
18 v.
19 BLU DOT DESIGN &
20 MANUFACTURING, INC., et al.
21 Defendants.

For Entry in Case Nos. RG 14715008

*Assigned for All Purposes to
Judge George C. Hernandez, Jr.,
Department 17*

**[PROPOSED] CONSENT JUDGMENT AS
TO DEFENDANT BLU DOT DESIGN &
MANUFACTURING, INC.**

(Health & Safety Code §§ 25249.5 *et seq.*)

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held
4 (“Plaintiff”) and defendant Blu Dot Design & Manufacturing, Inc. (“Blu Dot”), with Plaintiff and
5 Blu Dot together referred to as the “Parties.”

6 **1.2 Plaintiff**

7 Plaintiff is an individual residing in the State of California who seeks to promote awareness
8 of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Blu Dot**

11 Blu Dot employs ten or more persons and is a person in the course of doing business for
12 purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health &
13 Safety Code § 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 **1.4.1** Plaintiff alleges that Blu Dot manufactured, imported, sold and/or distributed
16 for sale in California, products with foam cushioned components containing tris(1,3-dichloro-2-
17 propyl) phosphate (“TDCPP”) and/or tris(2-chloroethyl) phosphate (“TCEP”) without the requisite
18 Proposition 65 health hazard warnings.

19 **1.4.2** Pursuant to Proposition 65, on April 1, 1992, California identified and listed
20 TCEP as a chemical known to cause cancer. TCEP became subject to the “clear and reasonable
21 warning” requirements of the Act one year later on April 1, 1993. Cal. Code Regs., Tit. 27, §
22 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

23 **1.4.3** Pursuant to Proposition 65, on October 28, 2011, California identified and
24 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and
25 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
26 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Plaintiff alleges that
27 TDCPP and TCEP escape from foam padding, leading to human exposures. TDCPP and TCEP are
28 hereinafter collectively referred to as the “Listed Chemicals.”

1 **1.5 Product Description**

2 The category of products that are covered by this Consent Judgment is upholstered furniture
3 with foam padding including, but not limited to, the *TOO by Blu Dot Hipper Office Chair*
4 (*#14129564*) (hereinafter the “Products”). Polyurethane foam that is supplied, shaped or
5 manufactured for use as a component of another product, such as upholstered furniture, but which is
6 not itself a finished product, is specifically excluded from the definition of Products.

7 **1.6 Notices of Violation**

8 On October 25, 2013, Plaintiff served Blu Dot and certain requisite public enforcement
9 agencies with a “60-Day Notice of Violation” (“Initial Notice”) that provided the recipients with
10 notice of alleged violations of Proposition 65 based on the failure to warn customers, consumers,
11 and workers in California that the Products with respect to upholstered chairs with foam padding
12 containing TDCPP and/or TCEP expose users to one or more Listed Chemicals. On or about April
13 30, 2014, Plaintiff served Blu Dot and certain requisite public enforcement agencies with a
14 “Supplemental 60-Day Notice of Violation” (“Supplemental Notice”) that provided the recipients
15 with notice of alleged violations of Proposition 65 based on the failure to warn customers,
16 consumers, and workers in California that the Products with respect to all upholstered furniture with
17 foam padding containing TDCPP and/or TCEP expose users to one or more Listed Chemicals.
18 (The Initial Notice and Supplemental Notice together are referred to as the “Notices.”)

19 **1.7 Complaint**

20 On February 24, 2014, Plaintiff filed a Complaint in this Court against Blu Dot (the
21 “Complaint”) for the alleged violations of Proposition 65 that are the subject of the Notices.
22 Following the expiration of the sixty-day notice period following Plaintiff’s service of the
23 Supplemental Notice, and upon entry of this Consent Judgment, the Complaint shall be deemed
24 amended *nunc pro tunc* to include all upholstered furniture with foam padding containing TDCPP
25 and/or TCEP sold, manufactured or distributed by Blu Dot in California and the violations alleged
26 in the Supplemental Notice, provided that as of the expiration of the sixty-day notice period
27 following Plaintiff’s service of the Supplemental Notice no public enforcer has diligently
28 prosecuted any of the allegations set forth in the Supplemental Notice.

1 **1.8 No Admission**

2 Blu Dot denies the material, factual, and legal allegations contained in Plaintiff's Notices
3 and Complaint, and maintains that all of the products that it has manufactured, imported,
4 distributed, and/or sold in California, including the Products, have been, and are, in compliance
5 with all laws. Nothing in this Consent Judgment shall be construed as an admission by Blu Dot of
6 any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this
7 Consent Judgment constitute or be construed as an admission by Blu Dot of any fact, finding,
8 conclusion, issue of law, or violation of law. This section shall not, however, diminish or otherwise
9 affect Blu Dot's obligations, responsibilities, and duties under this Consent Judgment.

10 **1.9 Consent to Jurisdiction**

11 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
12 jurisdiction over Blu Dot as to the allegations contained in the Complaint, that venue is proper in
13 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
14 this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure § 664.6.

15 **2. DEFINITIONS**

16 **2.1 California Customers**

17 "California Customer" shall mean any customer that Blu Dot reasonably understands is
18 located in California, has a California warehouse or distribution center, maintains a retail outlet in
19 California, or has made internet sales into California on or after January 1, 2011.

20 **2.2 No Detectable Amount**

21 "No Detectable Amount" shall mean containing no more than 25 parts per million ("ppm")
22 (the equivalent of .0025%) of any one chemical in any material, component, or constituent of a
23 subject product, when analyzed by a laboratory certified by the State of California or accredited by
24 the State of California, a federal agency, the National Environmental Laboratory Accreditation
25 Program or similar nationally recognized accrediting organization pursuant to EPA testing
26 methodologies 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to
27 determine the presence, and measure the quantity, of TDCPP, TCEP and/or tris(2,3-
28 dibromopropyl)phosphate ("TDBPP") in a solid substance.

1 **2.3 Effective Date**

2 “Effective Date” shall mean May 15, 2014.

3 **2.4 Private Label Covered Products**

4 “Private Label Covered Products” means Products that bear a brand or trademark owned or
5 licensed by a Retailer or affiliated entity that are sold or offered for sale by a Retailer in the State of
6 California.

7 **2.5 Reformulated Products**

8 “Reformulated Products” shall mean Products that contain No Detectable Amount of
9 TDCPP or TCEP.

10 **2.6 Reformulation Standard**

11 The “Reformulation Standard” shall mean Products containing No Detectable Amount of
12 each of TDCPP and TCEP.

13 **2.7 Retailer**

14 “Retailer” means an individual or entity that offers a Product for retail sale to consumers in
15 the State of California.

16 **3. INJUNCTIVE RELIEF: REFORMULATION**

17 **3.1 Reformulation Commitment**

18 Commencing on September 30, 2014, Blu Dot shall not manufacture or import for
19 distribution or sale to California Customers, or cause to be manufactured or imported for
20 distribution or sale to California Customers, any Products that are not Reformulated Products.

21 **3.2 Vendor Notification/Certification**

22 On or before the Effective Date, Blu Dot shall provide written notice to all of its then-
23 current vendors of the Products that will be sold or offered for sale in California or to California
24 Customers, instructing each such vendor to use reasonable efforts to provide it with only
25 Reformulated Products. In addressing the obligation set forth in the preceding sentence, Blu Dot
26 shall not employ statements that will encourage a vendor to delay compliance with the
27 Reformulation Standard. No later than November 1, 2014, the Blu Dot shall obtain written
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1 certifications, from such vendors, and any newly engaged vendors, that the Products manufactured
2 by such vendors are in compliance with the Reformulation Standard. Certifications shall be held by
3 Blu Dot for at least two years after their receipt and shall be made available to Plaintiff upon
4 request.

5 3.3 Products No Longer in a Blu Dot's Control

6 No later than 45 days after the Effective Date, Blu Dot shall, to the extent it has not done so
7 already, send a letter, electronic or otherwise ("Notification Letter") to: (1) each California
8 Customer and/or Retailer to which it, after October 28, 2011, supplied the item for resale in
9 California described as an exemplar in the Notice(s) Blu Dot received from Plaintiff, *i.e.*, the *TOO*
10 *by Blu Dot Hipper Office Chair (#14129564)* ("Exemplar Product"); and (2) any California
11 Customer and/or Retailer that Blu Dot reasonably believes had any inventory for resale in
12 California of Exemplar Product as of the relevant Notice(s) date. The Notification Letter shall
13 advise the recipient that the Exemplar Product "contains TDCPP and TCEP, chemicals known to
14 the State of California to cause cancer," and request that the recipient either: (a) label the Exemplar
15 Products remaining in inventory for sale in California, or to California Customers, pursuant to
16 Section 3.5; or (b) return, at Blu Dot's sole expense, all units of the Exemplar Product held for sale
17 in California, or to California Customers, to Blu Dot or a party Blu Dot has otherwise designated.
18 The Notification Letter shall require a response from the recipient within 15 days confirming
19 whether the Exemplar Product will be labeled or returned. Blu Dot shall maintain records of all
20 Notification Letters and responses generated pursuant to this Section for two years after the
21 Effective Date, and shall promptly produce copies of such records upon Plaintiff's written request.

22 3.4 Current Inventory

23 Any Products in, or manufactured and en route to, Blu Dot's inventory on or after June 30,
24 2014, that do not qualify as Reformulated Products, and that Blu Dot reasonably believes may be
25 sold or distributed for sale in California, shall contain a clear and reasonable warning as set forth in
26 Section 3.5, below, unless Section 3.6 applies.
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1 3.5 **Product Warnings**

2 3.5.1 **Product Labeling**

3 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,
4 labeling, or directly on each Product. Each warning shall be prominently placed with such
5 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
6 to be read and understood by an ordinary individual under customary conditions before purchase.
7 Each warning shall be provided in a manner such that the consumer or user understands to which
8 specific Product the warning applies, so as to minimize the risk of consumer confusion.

9 A warning provided pursuant to this Consent Judgment shall state:

10 **WARNING:** This product contains TDCPP and
11 TCEP, flame retardant chemicals
 known to the State of California to
 cause cancer.¹

12 Attached as Exhibit A are template warnings developed by Plaintiff that are deemed to be
13 clear and reasonable for purposes of this Consent Judgment.² Provided that the other requirements
14 set forth in this Section are addressed, including as to the required warning statement and method of
15 transmission set forth above, Blu Dot remains free not to utilize the template warnings.

16 3.5.2 **Internet Website Warning**

17 A warning shall be given in conjunction with the sale of the Products in or into California,
18 or to California Customers via the internet, which warning shall appear on one or more web pages

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20 ¹ The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be
21 used if Blu Dot employed it prior to the Effective Date. If Blu Dot seeks to use warning language
22 other than the language specified above or the safe harbor warning specified in 27 CCR § 25603.2,
23 or seeks to use an alternate method of transmission for the warning, it must obtain the Court's
24 approval of its proposed alternative and provide all Parties and the Office of the Attorney General
with timely notice and the opportunity to comment or object before the Court acts on the request.
The Parties agree that the following warning language shall, for purposes of this Consent Judgment
only, not be deemed to meet the requirements of 27 CCR § 25601 *et seq.* and shall not be used
pursuant to this Consent Judgment: (a) "cancer or birth defects or other reproductive harm" and (b)
"cancer, birth defects or other reproductive harm."

25 ² The characteristics of the template warnings are as follows: (a) a yellow hang tag
26 measuring 3" x 5" with no less than 12 point font, with the warning language printed on each side
27 of the hang tag, which shall be affixed directly to the Product; (b) a yellow warning sign measuring
28 8.5" x. 11", with no less that 32 point font, with the warning language printed on each side, which
shall be affixed directly to the Product; and (c) for Products sold at retail in a box or packaging, a
yellow warning sticker measuring 3" x 3", with no less than 12 point font, which shall be affixed
directly to the Product packaging.

1 displayed to a purchaser during the checkout process. The following warning statement shall be
2 used and shall: (a) appear adjacent to or immediately following the display, description, or price of
3 the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer.
4 The warning text shall be the same type size or larger than the Product description text:

5 **WARNING:** This product contains TDCPP and
6 TCEP, flame retardant chemicals
7 known to the State of California to
 cause cancer.³

8 **3.6 Alternatives to Interim Warnings**

9 The obligations of Blu Dot under Section 3.3 shall be relieved provided Blu Dot certifies no
10 later than June 15, 2014, that only Exemplar Products meeting the Reformulation Standard will be
11 offered for sale in California, or offered to California Customers for sale in California, after June
12 30, 2014. The obligations of a Blu Dot under Section 3.4 shall be relieved provided Blu Dot
13 certifies on or before June 15, 2014, that after December 31, 2014, it will only distribute or cause to
14 be distributed for sale in, or sell in, California, or to California Customers for sale in California,
15 Products (i.e., Products beyond the Exemplar Product) meeting the Reformulation Standard. The
16 certifications provided by this Section are material terms and time is of the essence.

17 **4. MONETARY PAYMENTS**

18 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

19 In settlement of all the claims referred to in this Consent Judgment, Blu Dot shall pay the
20 civil penalties below in accordance with this Section. Each penalty payment will be allocated in
21 accordance with California Health & Safety Code § 25249.12(c)(1) and (d), with 75% of the funds
22 remitted to the California Office of Environmental Health Hazard Assessment (“OEHHHA”), and 25
23 % of the penalty remitted to “The Chanler Group in Trust for Held.” Each penalty payment shall be
24 made within two business days of the date it is due and be delivered to the addresses listed in
25 Section 4.5 below. Blu Dot shall be liable for payment of simple interest at a rate of 10% for all
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28 ³ Footnote 1, *supra*, applies in this context as well.

1 amounts due and owing under this Section that are received more than two business days after the
2 due date.

3 **4.1.1 Initial Civil Penalty.** Blu Dot shall make an initial civil penalty payment in
4 the amount of \$22,000. On or before May 15, 2014, Blu Dot shall deposit this \$22,000 Initial Civil
5 Penalty payment to Blu Dot's counsel "in trust." Such funds shall be released and paid in
6 accordance with the payment procedures set from below in Section 4.5. within ten (10) days after
7 the Court approves and enters this Consent Judgment,

8 **4.1.2 Second Civil Penalty.** On or before July 15, 2014, and subject to the penalty
9 waiver set forth below, Blu Dot shall make a second civil penalty payment in the amount of
10 \$23,000, provided, however, that if the Court has not approved and entered this Consent Judgment
11 by July 10, 2014, Blu Dot shall deposit this \$23,000 Second Civil Penalty payment, to the extent
12 not waived, to Blu Dot's counsel "in trust." In such event, such funds shall be released and paid in
13 accordance with the payment procedures set from below in Section 4.5. within five (5) days after the
14 Court approves and enters this Consent Judgment. The amount of the second penalty may be
15 reduced according to any penalty waiver Blu Dot is eligible for under Sections 4.1.4(i) and
16 4.1.4(iii), below.

17 **4.1.3 Third Civil Penalty.** On or before February 15, 2015, and subject to the
18 penalty waiver set forth below, Blu Dot shall make a third civil penalty payment in the amount of
19 \$16,000, provided, however, that if the Court has not approved and entered this Consent Judgment
20 by February 10, 2015, Blu Dot shall deposit this \$16,000 Third Civil Penalty payment, to the extent
21 not waived, to Blu Dot's counsel "in trust." In such event, such funds shall be released and paid in
22 accordance with the payment procedures set from below in Section 4.5. within five (5) days after the
23 Court approves and enters this Consent Judgment,. The amount of the third penalty may be reduced
24 according to any penalty waiver Blu Dot is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

25 **4.1.4 Reductions to Civil Penalty Payment Amounts.** Blu Dot may reduce the
26 amount of the second and/or third civil penalty payments identified above by providing Plaintiff
27 with certification of certain efforts undertaken to reformulate its Products or limit the ongoing sale
28 of non-reformulated Products in California. The options to provide a written certification in lieu of

1 making a portion of Blu Dot's civil penalty payment constitute material terms of this Consent
2 Judgment, and with regard to such terms, time is of the essence.

3 **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of**
4 **Products Sold in California.**

5 A portion of the second civil penalty in the amount of \$13,500 shall be waived, to the extent
6 that Blu Dot has agreed that, as of June 1, 2014, and continuing into the future, it shall only
7 manufacture or import for distribution or sale to California Customers, or cause to be manufactured
8 or imported for distribution or sale to California Customers, Reformulated Products. An officer or
9 other authorized representative of Blu Dot that has exercised this election shall provide Plaintiff's
10 counsel with a written certification confirming compliance with such conditions no later than June
11 15, 2014.

12 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

13 A portion of the third civil penalty in the amount of \$9,000 shall be waived, to the extent
14 that Blu Dot has agreed that, as of September 15, 2014, and continuing into the future, it shall only
15 manufacture or import for distribution or sale in California or cause to be manufactured or imported
16 for distribution or sale in California, Reformulated Products which also contains No Detectable
17 Amount of TDBPP. An officer or other authorized representative of Blu Dot that has exercised this
18 election shall provide Plaintiff's counsel with a written certification confirming compliance with
19 such conditions no later than February 1, 2015.

20 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Non-Reformulated**
21 **Exemplar Products from the California Market.**

22 A portion of the second civil penalty in the amount of \$9,500 shall be waived, if an officer
23 or other authorized representative of Blu Dot provides Plaintiff's counsel with written certification
24 by June 15, 2014, confirming that each individual or establishment in California to which it
25 supplied the Exemplar Product after October 28, 2011, has elected to return all remaining Exemplar
26 Products held for sale in California.
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4.1.4(iv) **Partial Penalty Waiver for Termination of Distribution to California of Inventory of Non-Reformulated Products.**

A portion of the third civil penalty in the amount of \$7,000 shall be waived, if an officer or other authorized representative of Blu Dot provides Plaintiff's counsel with written certification, on or before February 1, 2015, confirming that, as of January 1, 2015, it has and will continue to distribute, offer for sale, or sell in California, or to California Customers, only Reformulated Products.

4.2 **Representations Regarding Sales, Company Size and Compliance**

Blu Dot represents that the sales data and other information concerning its size, knowledge of the presence of the Listed Chemicals, and prior reformulation and/or warning efforts, it provided to Plaintiff is truthful to its knowledge and material factors upon which Plaintiff relied to determine the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7(b) under this Consent Judgment. If, within nine months of the Effective Date, Plaintiff discovers and presents to Blu Dot, evidence demonstrating that the preceding representations and/or warranties are materially inaccurate, then Blu Dot shall have 30 days to meet and confer regarding the Plaintiff's contention. Should this 30 day period pass without any resolution between the Plaintiff and Blu Dot, Plaintiff shall be entitled to file a formal legal claim including, but not limited to, a claim for damages for breach of contract.

Blu Dot further represents that in implementing the requirements set forth in Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to achieve reformulation of its Products and Additional Products on a nationwide basis and not employ statements that will encourage a vendor to limit its compliance with the Reformulation Standard to goods intended for sale to California consumers.

4.3 **Stipulated Penalties for Certain Violations of the Reformulation Standard.**

If Plaintiff provides notice and appropriate supporting information to Blu Dot that levels of a Listed Chemical in excess of the Reformulation Standard have been detected in one or more Products labeled or otherwise marked in an identifiable manner as manufactured or imported after a deadline for meeting the Reformulation Standard has arisen for Blu Dot under Sections 3.1 or 3.6

1 above, Blu Dot may elect to pay a stipulated penalty to relieve any further potential liability under
2 Proposition 65 or sanction under this Consent Judgment as to Products sourced from the vendor in
3 question.⁴ The stipulated penalty shall be \$1,500 if the violation level is below 100 ppm and \$3,000
4 if the violation level is between 100 ppm and 249 ppm, this being applicable for any amount in
5 excess of the Reformulation Standards but under 250 ppm.⁵ Plaintiff shall further be entitled to
6 reimbursement of its associated expense in an amount not to exceed \$5,000 regardless of the
7 stipulated penalty level. If applicable under this Section, Blu Dot must provide notice and
8 appropriate supporting information relating to the purchase (e.g. vendor name and contact
9 information including representative, purchase order, certification (if any) received from vendor for
10 the exemplar or subcategory of products), test results, and a letter from a company representative or
11 counsel attesting to the information provided to Plaintiff within 30 calendar days of receiving test
12 results from Plaintiff's counsel. Any violation levels at or above 250 ppm shall be subject to the
13 full remedies available pursuant to this Consent Judgment and at law.

14 4.4 Reimbursement of Fees and Costs

15 The Parties acknowledge that Plaintiff and its counsel offered to resolve the non-monetary
16 terms of this dispute before reaching terms on the amount of fees and costs to be reimbursed to
17 them, thereby leaving this fee reimbursement issue to be resolved after the material terms of the
18 agreement had been agreed to in principle. The Parties then agreed to resolve the fee and cost issue
19 shortly after the other settlement terms had been tentatively finalized subject to agreement on fees
20 and costs. The Parties then attempted to and did reach accord on compensation due Plaintiff and its
21 counsel under general contract principles and the private attorney general doctrine codified at
22 California Code of Civil Procedure section 1021.5 for all work performed through the mutual
23 execution of this agreement, including the fees and costs incurred as a result of investigating,
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25 ⁴ This Section shall not be applicable where the vendor in question had previously been
26 found by Blu Dot to have provided unreliable certifications as to meeting the Reformulation
27 Standard in its Products on more than one occasion. Notwithstanding the foregoing, a stipulated
28 penalty for a second exceedance by a Blu Dot vendor at a level between 100 and 249 ppm shall not
be available after January 1, 2016.

⁵ Any stipulated penalty payments made pursuant to this Section should be allocated and
remitted in the same manner as set forth in Sections 4.1 and 4.5, respectively.

1 bringing this matter to Blu Dot's attention, negotiating a settlement in the public interest, and
2 seeking court approval of the same. In addition, the negotiated fee and cost figure expressly
3 includes the anticipated significant amount of time plaintiff's counsel will incur to monitor various
4 provisions in this agreement over the next two years. Blu Dot more specifically agrees to pay
5 Plaintiffs' counsel fees and costs in the amount of \$38,000. Blu Dot further agrees to deposit its
6 full required payment under this Section to Blu Dot's counsel in trust no later than May 15, 2014.
7 Such funds shall be released and paid in accordance with the payment procedures set from below in
8 Section 4.5 within five (5) days after the Court's approval and entry of this Consent Judgment.

9 **4.5 Payment Procedures**

10 4.5.1 Issuance of Payments.

11 (a) All payments and tax forms owed to Plaintiff and his counsel under
12 this Consent Judgment shall be delivered to the following address:

13 The Chanler Group
14 Attn: Proposition 65 Controller
15 2560 Ninth Street
16 Parker Plaza, Suite 214
17 Berkeley, CA 94710

18 (b) All payments and tax forms owed to OEHHA under this Consent
19 Judgment shall be delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of
20 the following addresses, as appropriate:

21 For United States Postal Service Delivery:

22 Mike Gyurics
23 Fiscal Operations Branch Chief
24 Office of Environmental Health Hazard Assessment
25 P.O. Box 4010
26 Sacramento, CA 95812-4010

27 For Non-United States Postal Service Delivery:

28 Mike Gyurics
 Fiscal Operations Branch Chief
 Office of Environmental Health Hazard Assessment
 1001 I Street
 Sacramento, CA 95814

1 4.5.2 **Proof of Payment to OEHHA.** A copy of each check payable to OEHHA
2 shall be mailed, simultaneous with payment, to Plaintiff's counsel at the address set forth in Section
3 4.5.1(a) above, as proof of payment to OEHHA.

4 4.5.3 **Tax Documentation.** Blu Dot shall issue a separate 1099 form for its
5 payments under this Consent Judgment to each of the following payees: (a) Anthony Held, whose
6 address and tax identification number shall be furnished within ten (10) days after this Consent
7 Judgment has been fully executed by the Parties; (b) "California Office of Environmental Health
8 Hazard Assessment" (EIN: 68-0284486); and (c) "The Chanler Group" (EIN: 94-3171522) .

9 **5. CLAIMS COVERED AND RELEASED**

10 **5.1 Plaintiff's Release of Proposition 65 Claims**

11 Plaintiff, acting on his own behalf and in the public interest, releases Blu Dot, its parents,
12 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,
13 attorneys, and each entity to whom Blu Dot directly or indirectly distribute or sell Products,
14 including, but not limited, to downstream distributors, wholesalers, customers, retailers,
15 franchisees, cooperative members, and licensees, including without limitation Target Corporation
16 (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective
17 Date based on unwarned exposures to the Listed Chemicals in the Products, as set forth in the
18 Notices. Compliance with the terms of this Consent Judgment constitutes compliance with
19 Proposition 65 with respect to exposures to the Listed Chemicals from the Products, as set forth in
20 the Notices. The Parties further understand and agree that this Section 5.1 release shall not extend
21 upstream to any entities, other than Blu Dot, that manufactured the Products or any component
22 parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof
23 to Blu Dot, except that entities upstream of Blu Dot that is a Retailer of a Private Labeled Covered
24 Product shall be released as to the Private Labeled Covered Products offered for sale in California,
25 or to California Customers, by the Retailer in question.

26 **5.2 Plaintiff's Individual Releases of Claims**

27 Plaintiff, in his individual capacity only and *not* in his representative capacity, provides a
28 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all

1 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
2 liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown,
3 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP,
4 TCEP, and/or TDBPP in the Products manufactured, imported, distributed, or sold by Blu Dot prior
5 to the Effective Date. The Parties further understand and agree that this Section 5.2 release shall
6 not extend upstream to any entities that manufactured the Products, or any component parts thereof,
7 or any distributors or suppliers who sold the Products, or any component parts thereof to Blu Dot,
8 except that entities upstream of Blu Dot that is a Retailer of a Private Labeled Product shall be
9 released as to the Private Labeled Products offered for sale in California by the Retailer in question.
10 Nothing in this Section affects Plaintiff's rights to commence or prosecute an action under
11 Proposition 65 against a Releasee that does not involve Blu Dot's Products.

12 5.3 **Blu Dot's Release of Plaintiffs**

13 Blu Dot, on behalf of itself, its past and current agents, representatives, attorneys,
14 successors, and assignees, hereby waives any and all claims against Plaintiff and his attorneys and
15 other representatives, for any and all actions taken or statements made (or those that could have
16 been taken or made) by Plaintiff and his attorneys and other representatives, whether in the course
17 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
18 respect to the Products or Additional Products.

19 **6. COURT APPROVAL**

20 This Consent Judgment is not effective until it is approved and entered by the Court and
21 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court
22 within one year after it has been fully executed by the Parties. If the Court does not approve the
23 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or appeal
24 the ruling. If the Parties do not jointly agree on a course of action to take, then the case shall
25 proceed in its normal course on the Court's trial calendar. If the Court's approval is ultimately
26 overturned by an appellate court, the Parties shall meet and confer as to whether to modify the
27 terms of this Consent Judgment. In the event that this Consent Judgment is entered by the Court
28 and subsequently overturned by any appellate court, all monies that have been provided to OEHHA,

1 Plaintiff and his counsel pursuant to Section 4, above, shall be refunded within 15 days of the
2 appellate decision becoming final. If the Court does not approve and enter the Consent Judgment
3 within one year of the Effective Date, all monies that have been provided to OEHHA or held in
4 trust for Plaintiff or his counsel pursuant to Section 4, above, shall be refunded to Blu Dot within 15
5 days of Plaintiff's receipt of notice from Blu Dot that the one-year period has expired and the
6 Consent Judgment has not been entered by the Court.

7 **7. GOVERNING LAW**

8 The terms of this Consent Judgment shall be governed by the laws of the State of California.
9 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
10 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
11 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered
12 inapplicable by reason of law generally as to the Products, then Blu Dot may provide written notice
13 to Plaintiff of any asserted change in the law, and shall have no further obligations pursuant to this
14 Consent Judgment with respect to, and to the extent that, the Products are so affected. Nothing in
15 this Consent Judgment shall be interpreted to relieve Blu Dot from any obligation to comply with
16 any pertinent state or federal law or regulation.

17 **8. NOTICES**

18 Unless specified herein, all correspondence and notices required to be provided pursuant to
19 this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class
20 registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the
21 other party at the following addresses:

22 To Blu Dot:
23 John Christakos
24 President
25 Blu Dot Design & Manufacturing, Inc.
26 1323 Tyler Street NE
27 Minneapolis, MN 55431

To Plaintiff:
Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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1 With a copy to:

2 Joshua A. Bloom
3 Barg Coffin Lewis & Trapp, LLP
4 350 California Street, 22nd Floor
5 San Francisco, CA 94104-1450

6 Any party, from time to time, may specify in writing to any other party a change of address to
7 which all notices and other communications shall be sent.

8 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

9 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
10 each of which shall be deemed an original, and all of which, when taken together, shall constitute
11 one and the same document.

12 **10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

13 Plaintiff and his attorneys agree to comply with the reporting form requirements referenced
14 in California Health & Safety Code section 25249.7(f).

15 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

16 Plaintiff and Blu Dot agree to support the entry of this agreement as a Consent Judgment
17 and obtain approval of the Consent Judgment by the Court in a timely manner. The Parties
18 acknowledge that, pursuant to California Health & Safety Code section 25249.7(f)(4), a noticed
19 motion is required to obtain judicial approval of this Consent Judgment, which Plaintiff shall draft
20 and file. If any third party objection to the noticed motion is filed, Plaintiff and Blu Dot shall work
21 together to file a reply and appear at any hearing. This provision is a material component of the
22 Consent Judgment and shall be treated as such in the event of a breach.

23 **12. MODIFICATION**

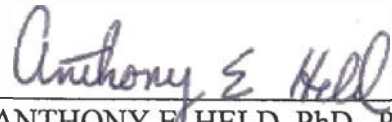
24 This Consent Judgment may be modified only: (a) by written agreement of the Parties and
25 upon entry of a modified Consent Judgment by the Court thereon; or (b) upon a successful motion
26 of any party and entry of a modified Consent Judgment by the Court.
27
28

1 **13. AUTHORIZATION**

2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

5 **AGREED TO:**

AGREED TO:

6 
7 _____
8 ANTHONY E. HELD, PhD., P.E.

FOR BLU DOT DESIGN &
MANUFACTURING, INC.

9 Dated: April 29, 2014

Dated: _____

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FOR BLU DOT DESIGN &
MANUFACTURING, INC.

9 Dated: _____

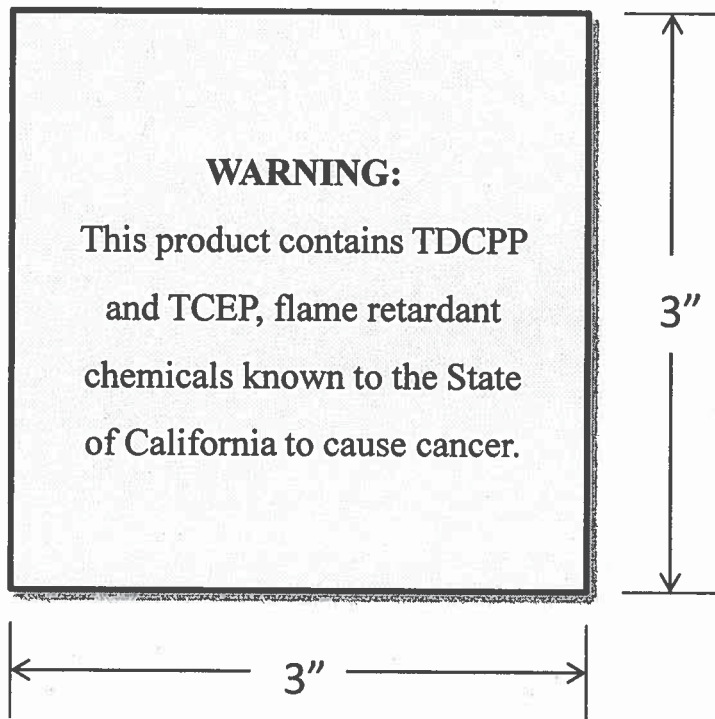
Dated: 4/29/14

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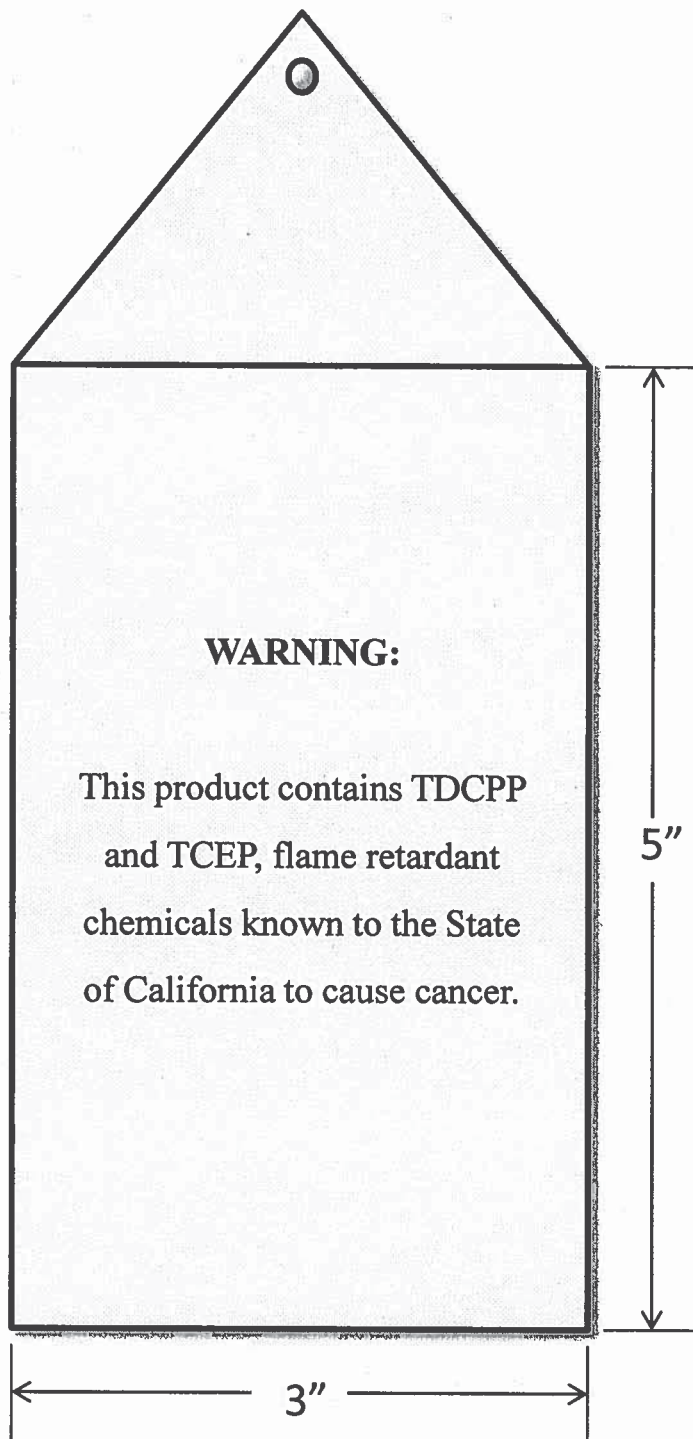
EXHIBIT A

(Template Warnings)

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INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. "WARNING:" text must be bold.

WARNING:

This product contains TDCCP and TCEP, flame
retardant chemicals known to the State of
California to cause cancer.

8.5"

11"

INSTRUCTIONS: Minimum 32 pt. Font. "WARNING:" text must be bold and underlined.