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10 CENTER FOR ENVIRONMENTAL HEALTH

**ENDORSED  
FILED  
ALAMEDA COUNTY**

JUL 14 2015

CLERK OF THE SUPERIOR COURT  
By Y. ESTRADA Deputy

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

13 CENTER FOR ENVIRONMENTAL  
14 HEALTH, a non-profit corporation,

15 Plaintiff,

16 v.

17 PACIFIC PLAY TENTS, INC., *et al.*,  
18 Defendants.

Case No. RG-15753975

**[PROPOSED] CONSENT  
JUDGMENT RE: BATTAT  
INCORPORATED AND MAISON  
JOSEPH BATTAT LTD.**

19 **1. INTRODUCTION**

20 1.1. This Consent Judgment is entered into by Plaintiff Center for Environmental  
21 Health, a non-profit corporation ("CEH"), and Defendants Battat Incorporated and Maison Joseph  
22 Battat Ltd. ("Defendants") to settle claims asserted by CEH against Defendants as set forth in the  
23 operative Complaint in the matter *Center for Environmental Health v. Pacific Play Tents, Inc., et*  
24 *al.*, Alameda County Superior Court Case No. RG-15753975 (the "Action"). CEH and  
25 Defendants are referred to collectively as the "Parties."

26 1.2. On October 6, 2014, CEH served a "Notice of Violation" (the "Notice") relating to  
27 the California Safe Drinking Water and Toxic Enforcement Act of 1986 ("Proposition 65") on  
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1 Defendants, the California Attorney General, the District Attorneys of every County in the State  
2 of California, and the City Attorneys for every City in State of California with a population  
3 greater than 750,000. The Notice alleges violations of Proposition 65 with respect to the presence  
4 of tris (1,3-dichloro-2-propyl) phosphate ("TDCPP") in children's play tents manufactured,  
5 distributed, and/or sold by Defendants.

6 1.3. Each Defendant is a corporation that employs ten (10) or more persons and that  
7 manufactures, distributes, and/or sells Covered Products (as defined herein) in the State of  
8 California.

9 1.4. For purposes of this Consent Judgment only, the Parties stipulate that: (i) this  
10 Court has jurisdiction over the allegations of violations contained in the Notice and Complaint  
11 and personal jurisdiction over Defendants as to the acts alleged in the Complaint; (ii) venue is  
12 proper in the County of Alameda; and (iii) this Court has jurisdiction to enter this Consent  
13 Judgment as a full and final resolution of all claims which were or could have been raised in the  
14 Complaint based on the facts alleged in the Notice and Complaint with respect to Covered  
15 Products manufactured, distributed, and/or sold by Defendants.

16 1.5. The Parties enter into this Consent Judgment as a full and final settlement of all  
17 claims which were or could have been raised in the Complaint arising out of the facts or conduct  
18 related to Defendants alleged therein. By execution of this Consent Judgment and agreeing to  
19 comply with its terms, the Parties do not admit any fact, conclusion of law, or violation of law,  
20 nor shall compliance with the Consent Judgment constitute or be construed as an admission by  
21 the Parties of any fact, conclusion of law, or violation of law. Defendants deny the material,  
22 factual, and legal allegations in the Notice and Complaint and expressly deny any wrongdoing  
23 whatsoever. Except as specifically provided herein, nothing in this Consent Judgment shall  
24 prejudice, waive, or impair any right, remedy, argument, or defense either Party may have in this  
25 or any other pending or future legal proceedings. This Consent Judgment is the product of  
26 negotiation and compromise and is accepted by the Parties solely for purposes of settling,  
27 compromising, and resolving issues disputed in this Action.

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1           **2. DEFINITIONS**

2           2.1.    “Chemical Flame Retardant” means any halogenated or phosphorous-based  
3 chemical compound used for the purpose of resisting or retarding the spread of fire. “Chemical  
4 Flame Retardant” does not include any chemical that has been rated as a Benchmark 4 chemical  
5 pursuant to Clean Production Action’s GreenScreen (<http://www.greenscreenchemicals.org/>).

6           2.2.    “Covered Products” means children’s play tents manufactured, distributed, and/or  
7 sold by Defendants in California.

8           2.3.    “Effective Date” means the date on which the Court enters this Consent Judgment.

9           2.4.    “Listed Chemical Flame Retardants” means Tris(1,3-dichloro-2-propyl) phosphate  
10 (“TDCPP”), Tris(2-chloroethyl) phosphate (“TCEP”), and Tris(2,3-dibromopropyl)phosphate  
11 (“TDBPP”).

12          2.5.    “Manufacture Date” means the date the Covered Product was manufactured and  
13 as may be indicated on a tag attached to the Covered Product.

14          2.6.    “Treated” means the addition or application of any Chemical Flame Retardant to  
15 any fabric used in any Covered Product.

16          2.7.    “Untreated Fabric” means the fabric used to make the Covered Product that has  
17 not been Treated with any Chemical Flame Retardant.

18           **3. INJUNCTIVE RELIEF**

19          3.1.    **Reformulation of Covered Products.** Defendants shall comply with the  
20 following requirements to reformulate the Covered Products to eliminate exposures to TDCPP  
21 arising from the use of the Covered Products:

22                3.1.1. **Listed Chemical Flame Retardants – Covered Products.** As of the  
23 Effective Date, Defendants shall not manufacture, cause to be manufactured, distribute, sell, or  
24 offer for sale in California any Covered Product that has been Treated with any Listed Chemical  
25 Flame Retardant and which has a Manufacture Date that is on or later than the Effective Date.

26                    3.1.1.1. To ensure compliance with the reformulation provisions of this  
27 Section, following the Effective Date, each Defendant shall directly or through its supply chain  
28 issue specifications to its contract manufacturers and/or suppliers of Covered Products and/or

1 fabric used in any Covered Product requiring that such products and/or fabric have not been any  
2 Treated with any Listed Chemical Flame Retardant in accordance with the requirements of  
3 Section 3.1.1. Each Defendant shall obtain and maintain written certification(s) from its suppliers  
4 confirming that all such Covered Products and/or fabric received by Defendant for distribution in  
5 California have not been Treated with any Listed Chemical Flame Retardant. A Defendant shall  
6 not be deemed in violation of the requirements of Section 3.1.1 for any Covered Product to the  
7 extent: (a) it has relied on a written certification from its vendor that supplied a Covered Product  
8 that such Covered Product is made with only Untreated Fabric, and/or, if such certification is not  
9 relied on or has previously been demonstrated to be invalid, (b) it has obtained a test result from  
10 an independent third party certified laboratory reporting that the Covered Product has been made  
11 with no Listed Chemical Flame Retardants.

12           **3.1.2. Interim Compliance – Covered Products.** Any Covered Products in  
13 which the fabric has been Treated with any Listed Chemical Flame Retardant and which is  
14 distributed, sold, or offered for sale by Defendants in California after the Effective Date shall be  
15 accompanied by a Clear and Reasonable Warning that complies with Section 3.1.4.

16           **3.1.3. Warnings for Products in the Stream of Commerce.** In an effort to  
17 ensure that consumers receive clear and reasonable warnings in compliance with Proposition 65  
18 for Covered Products that have not been reformulated pursuant to Section 3.1.1 or labeled in  
19 accordance with Section 3.1.2, within 30 days following the Effective Date, each Defendant shall  
20 provide warning materials by certified mail to each of its California retailers or distributors to  
21 whom each Defendant reasonably believes it sold Covered Products that contained or may have  
22 contained TDCPP on or after October 31, 2011, and which Defendant knows or has reason to  
23 know still has such Covered Products in inventory. Such warning materials shall include a  
24 reasonably sufficient number of stickers and/or labels in order to permit the retailer or distributor  
25 to place a warning sticker or label on each Covered Product such customer has purchased from  
26 each Defendant. The stickers and/or labels shall contain the warning language set forth in Section  
27 3.1.4. The warning materials shall also include a letter of instruction for the placement of the  
28 stickers and/or labels, and a Notice and Acknowledgment postcard.

1                   3.1.4. **Proposition 65 Warnings.** A Clear and Reasonable Warning under this  
2 Consent Judgment shall state:

3                   WARNING: This product contains tris(1,3-dichloro-2-propyl) phosphate  
4                   (“TDCPP”) [and/or TCEP and/or TDBPP], a chemical[s] known to the State of  
5                   California to cause cancer.<sup>1</sup>

6 A Clear and Reasonable Warning shall not be preceded by, surrounded by, or include any  
7 additional words or phrases that contradict, obfuscate, or otherwise undermine the warning. The  
8 warning statement shall be prominently displayed on the Covered Product or the packaging of the  
9 Covered Product with such conspicuousness, as compared with other words, statements, or  
10 designs as to render it likely to be read and understood by an ordinary individual prior to sale.  
11 For internet, catalog, or any other sale where the consumer is not physically present and cannot  
12 see a warning displayed on the Covered Product or the packaging of the Covered Product prior to  
13 purchase or payment, the warning statement shall be displayed in such a manner that it is likely to  
14 be read and understood prior to the authorization of or actual payment.

15               3.2. **Optional Additional Reformulation – Use of Untreated Fabric.** In order for  
16 Defendants to be eligible for a waiver of the additional penalty/payment in lieu of penalty  
17 payments set forth in Section 4.1.5 below, Defendants shall undertake the additional actions to  
18 reduce or eliminate the use of Chemical Flame Retardants set forth herein. As of 90 days  
19 following the Effective Date, a Defendant shall not manufacture, cause to be manufactured,  
20 distribute, sell, or offer for sale in California any Covered Product that has been Treated with any  
21 Chemical Flame Retardant. In order to avoid the additional payments, Defendants must provide

22 \_\_\_\_\_  
23 <sup>1</sup> The regulatory safe harbor warning language specified in 27 C.C.R. § 25603.2 may also be used  
24 if Defendants had begun to use it prior to the Effective Date. Should either Defendant seek to use  
25 alternative warning language, other than the language specified above or the safe harbor warning  
26 specified in 27 C.C.R. § 25603.2, or seek to use an alternate method of transmission of the  
27 warning, it must obtain the Court’s approval of its proposed alternative and provide all Parties  
28 and the Office of the Attorney General with timely notice and the opportunity to comment or  
object before the Court acts on the request. In the event that Defendant’s application for Court  
approval of an alternative warning is contested by CEH, the prevailing party shall be entitled to  
its reasonable attorneys’ fees associated with opposing or responding to the opposition to the  
application. No fees shall be recoverable for the initial application seeking an alternative  
warning.

1 written certification to CEH of its use of only Untreated Fabric within 120 days following the  
2 Effective Date.

3           **3.2.1. Specification To and Certification From Suppliers.** To ensure  
4 compliance with the provisions of this Section 3.2, to the extent that Defendants opts for  
5 additional reformulation, each Defendant shall directly or through its supply chain issue  
6 specifications to its contract manufacturers and/or suppliers of Covered Products and/or fabric  
7 used in any Covered Product requiring that such products and/or fabric shall contain no Chemical  
8 Flame Retardants. A Defendant shall not be deemed in violation of the requirements of this  
9 Section 3.2 for any Covered Product to the extent: (a) it has relied on a written certification from  
10 its vendor that supplied a Covered Product that such product is made with only Untreated Fabric,  
11 and/or (b) has obtained a test result from a certified laboratory reporting that the Covered  
12 Product's fabric contains no Chemical Flame Retardants. Each Defendant shall obtain and  
13 maintain written certification(s) from its suppliers confirming that all such Covered Products  
14 and/or fabric received by Defendant for distribution in California is Untreated Fabric.

15           **4. PENALTIES AND PAYMENT**

16           4.1. Defendants shall initially pay to CEH the total sum of \$50,000 (fifty thousand  
17 dollars), which shall be allocated as follows:

18           4.1.1. \$6,600 shall constitute a penalty pursuant to Cal. Health & Safety Code §  
19 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health & Safety Code  
20 § 25249.12.

21           4.1.2. \$9,900 shall constitute a payment in lieu of civil penalty pursuant to Cal.  
22 Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such funds to  
23 continue its work of educating and protecting the public from exposures to toxic chemicals,  
24 including chemical flame retardants. CEH may also use a portion of such funds to monitor  
25 compliance with this Consent Judgment and to purchase and test Defendants' products to confirm  
26 compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH  
27 will use four percent (4%) of such funds to award grants to grassroots environmental justice  
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1 groups working to educate and protect the public from exposures to toxic chemicals. The method  
2 of selection of such groups can be found at the CEH website at [www.keh.org/justicefund](http://www.keh.org/justicefund).

3 4.1.3. \$33,500 shall constitute reimbursement of CEH's reasonable attorneys'  
4 fees and costs.

5 4.1.4. The payments required under Sections 4.1.1-4.1.3 shall be made in three  
6 separate checks, all to be delivered within 10 days following the Effective Date. The payments  
7 required pursuant to Sections 4.1.1 and 4.1.2 shall each be made payable CEH. The payment  
8 required pursuant to Section 4.1.3 shall be made payable to Lexington Law Group. All checks  
9 shall be delivered to Mark Todzo at Lexington Law Group at the address set forth in Section 8.

10 4.1.5. In the event that Defendants elect not to certify their compliance with  
11 Section 3.2 in accordance with that Section, within 120 days following the Effective Date,  
12 Defendants must make an additional payment of \$18,700, which shall be paid in two separate  
13 checks, each payable to CEH, to be allocated as follows:

14 4.1.5.1. \$7,480 shall constitute a penalty pursuant to Cal. Health &  
15 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health  
16 & Safety Code § 25249.12.

17 4.1.5.2. \$11,220 shall constitute a payment in lieu of civil penalty  
18 pursuant to Cal. Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such  
19 funds to continue its work of educating and protecting the public from exposures to toxic  
20 chemicals, including chemical flame retardants. CEH may also use a portion of such funds to  
21 monitor compliance with this Consent Judgment and to purchase and test Defendants' products to  
22 confirm compliance. In addition, as part of its Community Environmental Action and Justice  
23 Fund, CEH will use four percent (4%) of such funds to award grants to grassroots environmental  
24 justice groups working to educate and protect the public from exposures to toxic chemicals. The  
25 method of selection of such groups can be found at the CEH website at [www.keh.org/justicefund](http://www.keh.org/justicefund).

26 **5. ENFORCEMENT OF CONSENT JUDGMENT**

27 5.1. CEH may, by motion or application for an order to show cause before the Superior  
28 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.

1 Prior to bringing any motion or application to enforce the requirements of Section 3 above, CEH  
2 shall provide Defendants with a Notice of Violation and a copy of any test results which  
3 purportedly support CEH's Notice of Violation. The Parties shall then meet and confer regarding  
4 the basis for CEH's anticipated motion or application in an attempt to resolve it informally,  
5 including providing Defendants a reasonable opportunity of at least thirty (30) days to cure any  
6 alleged violation. Should such attempts at informal resolution fail, CEH may file its enforcement  
7 motion or application. The prevailing party on any motion to enforce this Consent Judgment  
8 shall be entitled to its reasonable attorney's fees and costs incurred as a result of such motion or  
9 application. This Consent Judgment may only be enforced by the Parties.

10 **6. MODIFICATION OF CONSENT JUDGMENT**

11 6.1. This Consent Judgment may only be modified by written agreement of CEH and  
12 Defendants, or upon motion of CEH or Defendants as provided by law.

13 **7. CLAIMS COVERED AND RELEASE**

14 7.1. This Consent Judgment is a full, final, and binding resolution between CEH acting  
15 in the public interest and Defendants and Defendants' parents, officers, directors, shareholders,  
16 divisions, subdivisions, subsidiaries, and their respective successors and assigns ("Defendant  
17 Releasees"), and all entities to whom they distribute or sell or have distributed or sold Covered  
18 Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees,  
19 cooperative members, and licensees ("Downstream Defendant Releasees"), of all claims alleged  
20 in the Complaint in this Action arising from any violation of Proposition 65 that have been or  
21 could have been asserted in the public interest against Defendants and Downstream Defendant  
22 Releasees, regarding the failure to warn about exposure to TDCPP in the Covered Products  
23 manufactured, distributed, or sold by Defendants prior to the Effective Date.

24 7.2. CEH, for itself releases, waives, and forever discharges any and all claims alleged  
25 in the Complaint against Defendants and Downstream Defendant Releasees arising from any  
26 violation of Proposition 65 that have been or could have been asserted regarding the failure to  
27 warn about exposure to TDCPP in connection with Covered Products manufactured, distributed,  
28 or sold by Defendants prior to the Effective Date.

1           7.3. Compliance with the terms of this Consent Judgment by Defendants and the  
2 Downstream Defendant Releasees shall constitute compliance with Proposition 65 by Defendants  
3 and Downstream Defendant Releasees with respect to any alleged failure to warn about any  
4 Listed Chemical Flame Retardants in Covered Products manufactured, distributed, or sold by  
5 Defendants after the Effective Date.

6           **8. PROVISION OF NOTICE**

7           8.1. When any Party is entitled to receive any notice under this Consent Judgment, the  
8 notice shall be sent by first class and electronic mail as follows:

9                   8.1.1. **Notices to Defendants.** The persons for Defendants to receive notices  
10 pursuant to this Consent Judgment shall be:

11                                 Jennifer Taggart  
12                                 Demetriou, Del Guercio, Springer & Francis, LLP  
13                                 700 S. Flower St., Suite 2325  
14                                 Los Angeles, CA 90017  
15                                 JTaggart@ddsffirm.com

16                   8.1.2. **Notices to Plaintiff.** The persons for CEH to receive notices pursuant to  
17 this Consent Judgment shall be:

18                                 Mark Todzo  
19                                 Lexington Law Group  
20                                 503 Divisadero Street  
21                                 San Francisco, CA 94117  
22                                 mtodzo@lexlawgroup.com

23           8.2. Any Party may modify the person and address to whom the notice is to be sent by  
24 sending the other Parties notice by first class and electronic mail.

25           **9. COURT APPROVAL**

26           9.1. This Consent Judgment shall become effective on the Effective Date, provided  
27 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
28 Defendants 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.

1           **10. GOVERNING LAW AND CONSTRUCTION**

2           10.1. The terms and obligations arising from this Consent Judgment shall be construed  
3 and enforced in accordance with the laws of the State of California.

4           **11. ENTIRE AGREEMENT**

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

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

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

17           11.4. No supplementation, modification, waiver, or termination of this Consent  
18 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

19           11.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or  
20 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall  
21 such waiver constitute a continuing waiver.

22           **12. RETENTION OF JURISDICTION**

23           12.1. This Court shall retain jurisdiction of this matter to implement or modify the  
24 Consent Judgment.

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

26           13.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized  
27 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
28 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

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**14. NO EFFECT ON OTHER SETTLEMENTS**

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

**15. EXECUTION IN COUNTERPARTS**

15.1. 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.

**IT IS SO STIPULATED:**

Dated: MAY 11, 2015

**CENTER FOR ENVIRONMENTAL HEALTH**

*Charlie Pizzaro*

CHARLIE PIZZARO

Printed Name

ASSOCIATE DIRECTOR

Title

Dated: \_\_\_\_\_, 2015

**BATTAT INCORPORATED**

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Printed Name

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15.1. 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.

**IT IS SO STIPULATED:**

Dated: \_\_\_\_\_, 2015      CENTER FOR ENVIRONMENTAL HEALTH

\_\_\_\_\_

Printed Name

Title

Dated: MAY 4, 2015      BATTAT INCORPORATED

*Joseph Battat*

Printed Name

JOSEPH BATTAT

Title PRESIDENT

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Dated: May 4, 2015 MAISON JOSEPH BATTAT LTD.

J. Battat

Printed Name

JOSEPH BATTAT

Title

PRESIDENT

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

Dated: 7/14, 2015 George C. Hernandez, Jr.

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

GEORGE C. HERNANDEZ, JR.