

SETTLEMENT AGREEMENT & RELEASE – SCHOOL SPECIALTY, INC.

This Settlement Agreement and Release (the “Agreement”) is between Center for Environmental Health (“CEH”) and School Specialty, Inc. (“SSI”) (together, the “Parties”).

1. INTRODUCTION

1.1. On November 20, 2012, CEH sent a “Notice of Violation of Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)” (the “Notice”), to SSI, the California Attorney General, the District Attorneys of every county in the State of California, and the City Attorneys for every city in State of California with a population greater than 750,000. The Notice alleged violations of Proposition 65 with respect to the presence of tris (1,3-dichloro-2-propyl) phosphate (“TDCPP”) in foam-cushioned pads for children and infants to lie on. SSI previously distributed and/or sold such products to consumers in California.

1.2. The Notice alleged that the products listed in the Notice expose people to TDCPP, a chemical known to the State of California to cause cancer, specifically those persons who inhale TDCPP released from these products, or who touch or ingest dust contaminated by TDCPP from the products. The Notice alleged that SSI’s sale of such products violated Health & Safety Code § 25249.6, the warning provision of Proposition 65, as consumers were exposed without a clear and reasonable warning to such persons regarding the carcinogenic hazards associated with TDCPP.

1.3. On January 8, 2013, after receiving the Notice, SSI contacted the manufacturer of the exemplar nap mat product identified in the Notice and notified that entity of SSI’s intent to return all such products containing TDCPP to the producer and to replace them with products that did not contain TDCPP. On January 23, 2013, all exemplar products containing TDCPP were returned to the producer and replaced with products that did not contain TDCPP. In

February 2013, SSI resumed sales of reformulated exemplar products that did not contain TDCPP. SSI asserts that it sold only one Proposition 65-noncompliant product into California after October 28, 2012, and that none of its foam-cushioned pads for children and infants to lie on contained TDCPP after January 23, 2013.

1.4. On January 28, 2013, SSI filed for Chapter 11 bankruptcy protection in the U.S. Bankruptcy Court for the District of Delaware. On April 1, 2013, CEH filed a Proof of Claim in the amount of \$250,000 for SSI's alleged violations with respect to TDCPP in products. On June 11, 2013, CEH filed an Amended Proof of Claim (the "Amended Proof of Claim") in the same amount attaching further evidentiary support for its claim.

1.5. On June 11, 2013, SSI's Chapter 11 Reorganization Plan went into effect. Under the terms of that Plan, unsecured creditors such as CEH are entitled to recover only a fraction of the value of their claims against the bankruptcy estate for claims arising prior to January 28, 2013.

1.6. The Parties enter into this Agreement for the purpose of liquidating CEH's Amended Proof of Claim and avoiding prolonged and costly litigation regarding products distributed and/or sold by SSI. By executing this Agreement, the Parties do not admit any facts or conclusions of law. It is the Parties' intent that nothing in this Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law.

2. DEFINITIONS

2.1. "Chemical Flame Retardant" means any halogenated or phosphorous-based chemical compound used for the purpose of resisting or retarding the spread of fire. "Chemical

Flame Retardant” does not include any chemical that has been rated as a Benchmark 4 chemical pursuant to Clean Production Action’s GreenScreen (<http://www.cleanproduction.org/Green.Greenscreen.php>).

2.2. “Covered Products” means foam-cushioned pads for children and infants to lie on, such as infant sleepers distributed and/or sold by SSI.

2.3. “Effective Date” means thirty (30) days after the date on which CEH reports this fully-executed Agreement to the Attorney General of California.

2.4. “Treated” means the addition or application of any Chemical Flame Retardant to any polyurethane foam used as filling material in any Covered Product.

3. INJUNCTIVE RELIEF

3.1. Reformulation of Covered Products. SSI shall comply with the following requirements to reformulate the Covered Products to eliminate exposures to TDCPP arising from the use of the Covered Products:

3.1.1. Sales Compliance Date. As of the Effective Date, SSI shall not distribute, sell, or offer for sale any Covered Product in which the polyurethane foam has been Treated with TDCPP.

3.1.2. Specification and Certification from Suppliers. To ensure compliance with the reformulation provisions of this Agreement, SSI shall issue specifications to its suppliers of polyurethane foam requiring that the polyurethane foam has not been Treated with any Chemical Flame Retardant. SSI shall obtain and maintain written certifications from its suppliers of polyurethane foam confirming that all such foam received by SSI after the Effective Date has not been Treated with any Chemical Flame Retardant.

4. SETTLEMENT PAYMENTS

4.1. In consideration of the mutual covenants and releases provided in this Agreement, SSI shall pay to CEH the total sum of \$12,500.00 (twelve thousand five hundred dollars and no cents). This total shall be paid in the manner set forth below, with each separate check delivered to the offices of the Lexington Law Group (Attn: Mark N. Todzo), 503 Divisadero Street, San Francisco, California 94117, and shall be made payable and allocated as follows:

4.1.1. Civil Penalty. SSI shall pay a total of \$1,000.00 (one thousand dollars and no cents) as a penalty pursuant to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12. The penalty check shall be made payable to the Center for Environmental Health and shall be delivered to the Lexington Law Group on or before the Effective Date.

4.1.2. Payment in Lieu of Penalty. SSI shall pay a total of \$1,500.00 (one thousand five hundred dollars and no cents) as payment to CEH in lieu of penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and protecting people from exposures to toxic chemicals, including chemical flame retardants. CEH may also use a portion of such funds to monitor compliance with this Agreement and to purchase and test Covered Products to confirm compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH will use four percent of such funds to award grants to grassroots environmental justice groups working to educate and protect people from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH web site at www.ceh.org/justicefund. The payment in lieu of penalty check shall be made payable to the Center for Environmental Health and shall be delivered to the Lexington Law Group on or

before the Effective Date.

4.1.3. Attorneys' Fees and Costs. SSI shall pay a total of \$10,000.00 (ten thousand dollars and no cents) to reimburse CEH for its reasonable attorneys' fees and costs. This payment shall be made payable to the Lexington Law Group and shall be delivered to the Lexington Law Group on or before the Effective Date.

5. ENFORCEMENT OF SETTLEMENT AGREEMENT

5.1. The Parties agree that either Party may enforce any term or condition contained in this Agreement by motion or application in the United States Bankruptcy Court for the District of Delaware.

5.2. Enforcement Procedures. Prior to bringing any motion or application to enforce the terms of this Agreement, a Party seeking to enforce shall provide the violating Party thirty (30) days advance written notice of the alleged violation. For alleged violations of the reformulation or market withdrawal provisions of Section 3 above, CEH shall provide SSI with a copy of any test results that purportedly support CEH's allegations concurrently with its advanced written notice. The Parties shall meet and confer during such thirty (30) day period regarding the basis for the anticipated motion or application in an attempt to resolve the disputed issues informally. Should such attempts at informal resolution fail, the Party alleging violations may file its enforcement motion or application. This Agreement may only be enforced by the Parties.

6. MODIFICATION OF SETTLEMENT AGREEMENT

6.1. This Agreement may be modified only by written agreement of the Parties.

7. CLAIMS COVERED AND RELEASE

7.1. This Agreement constitutes a full, final, and binding resolution between CEH acting in the public interest and SSI and SSI's parents, shareholders, divisions, subdivisions, subsidiaries, partners, affiliated companies, and their successors or assigns ("SSI Releasees"), and all entities to whom they distribute or sell Covered Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees ("Non-Party Releasees"), of all claims arising from any violation of Proposition 65 that have been or could have been asserted in the public interest against SSI Releasees and Non-Party Releasees regarding the failure to warn about exposure to TDCPP in the Covered Products distributed or sold by SSI prior to the Effective Date.

7.2. Except as otherwise provided herein, CEH hereby releases and discharges SSI with respect to any violation of Proposition 65 (or any other claim related to failure to warn about exposures to TDCPP in the Covered Products) that was or could have been asserted in the public interest against SSI Releasees and Non-Party Releasees regarding the failure to warn about exposure to TDCPP in connection with Covered Products distributed or sold by SSI prior to the Effective Date.

7.3. The Amended Proof of Claim is hereby deemed satisfied and released in full. CEH waives the rights to further amend the Amended Proof of Claim or to seek any additional recovery from SSI or the bankruptcy estates with respect to the claims alleged in the Amended Proof of Claim.

7.4. Compliance with the terms of this Agreement by SSI and Non-Party Releasees shall constitute compliance with Proposition 65 by SSI and Non-Party Releasees with respect to any alleged failure to warn about TDCPP in Covered Products manufactured, distributed, or sold

by SSI after the Effective Date.

8. PROVISION OF NOTICE

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

8.1.1. Notices to SSI. The persons for SSI to receive notices pursuant to this Agreement shall be:

School Specialty, Inc.
Attn: Legal Department
W6316 Design Drive
Greenville, Wisconsin 54942

8.1.2. Notices to CEH. The persons for CEH to receive notices pursuant to this Agreement shall be:

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

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

9. GOVERNING LAW AND CONSTRUCTION

9.1. The terms of this Agreement shall be construed and enforced in accordance with the laws of the State of California.

10. ENTIRE AGREEMENT

10.1. This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein.

10.2. There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto.

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

10.4. No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby.

10.5. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

11. AUTHORIZATION

11.1. Each signatory to this Agreement certifies that he or she is fully authorized by the Party he or she represents to enter into and execute the Agreement on behalf of the Party represented and to legally bind that Party.

12. NO EFFECT ON OTHER SETTLEMENTS

12.1. Nothing in this Agreement shall preclude CEH from resolving any claim against another entity on terms that are different than those contained in this Agreement.

12.2. Consistent with Article VI.C.2.a of SSI's plan of reorganization, this Agreement shall not be filed with the United States Bankruptcy Court for the District of Delaware and court approval shall not be required for this Agreement to be effective.

13. EXECUTION IN COUNTERPARTS

13.1. The stipulations to this Agreement may be executed in counterparts by means of electronic mail or facsimile, which taken together shall be deemed to constitute one document.

AGREED TO:

CENTER FOR ENVIRONMENTAL HEALTH



Charlie Pizarro
Associate Director

Dated: _____

10/14/14

SCHOOL SPECIALTY, INC.



Kevin Baehler
Senior Vice President
& Corporate Controller

Dated: _____

9/29/14