

1 Mark N. Todzo, State Bar No. 168389  
2 Joseph Mann, State Bar No. 207968  
3 503 Divisadero Street  
4 San Francisco, CA 94117  
5 Telephone: (415) 913-7800  
6 Facsimile: (415) 759-4112  
7 mtodzo@lexlawgroup.com  
8 jmann@lexlawgroup.com

9 Rick Franco, State Bar No. 170970  
10 Center for Environmental Health  
11 2201 Broadway, Suite 302  
12 Oakland, California 94612  
13 Telephone: (510) 655-3900  
14 Facsimile: (510) 655-9100  
15 rick@ceh.org

16 Attorneys for Plaintiff  
17 CENTER FOR ENVIRONMENTAL HEALTH

18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

16 CENTER FOR ENVIRONMENTAL  
17 HEALTH, a non-profit corporation,

18 Plaintiff,

19 v.

20 A BABY, INC., *et al.*,

21 Defendants.

Case No. RG-13667688

**[PROPOSED] CONSENT  
JUDGMENT**

22  
23 **1. INTRODUCTION**

24 1.1. This Consent Judgment is entered into by Plaintiff Center for Environmental  
25 Health, a non-profit corporation (“CEH”), and Defendant Victory Land Group, Inc.  
26 (“Defendant”) to settle claims asserted by CEH against Defendant as set forth in the operative  
27 Complaint in the matter *Center for Environmental Health v. A Baby, Inc., et al.*, Alameda County  
28

1 Superior Court Case No. RG-13667688 (the “Action”). CEH and Defendant are referred to  
2 collectively as the “Parties”.

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

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

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

20 1.5. The Parties enter into this Consent Judgment as a full and final settlement of all  
21 claims that were or which could have been raised in the Complaint arising out of the facts or  
22 conduct related to Defendant alleged therein. By execution of this Consent Judgment and  
23 agreeing to comply with its terms, the Parties do not admit any fact, conclusion of law, or  
24 violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an  
25 admission by the Parties of any fact, conclusion of law, or violation of law. Defendant denies the  
26 material, factual, and legal allegations in the Notice and Complaint and expressly denies any  
27 wrongdoing whatsoever. Except as specifically provided herein, nothing in this Consent  
28 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense either Party

1 may have in this or any other pending or future legal proceedings. This Consent Judgment is the  
2 product of negotiation and compromise and is accepted by the Parties solely for purposes of  
3 settling, compromising, and resolving issues disputed in this Action.

## 4 **2. DEFINITIONS**

5 2.1. “Chemical Flame Retardant” means any halogenated or phosphorous-based  
6 chemical compound used for the purpose of resisting or retarding the spread of fire, including but  
7 not limited to the chemical compounds listed on Exhibit A.

8 2.2. “Covered Products” means foam-cushioned upholstered furniture manufactured,  
9 distributed, and/or sold by Defendant in California.

10 2.3. “Effective Date” means the date on which the Court enters this Consent Judgment.

11 2.4. “TB 117” means Technical Bulletin No. 117, entitled “Requirements, Test  
12 Procedures and Apparatus for Testing the Flame Retardance of Filling Materials Used in  
13 Upholstered Furniture,” dated March 2000.

14 2.5. “TB 117-2013” means the proposed Technical Bulletin 117-2013, entitled  
15 “Requirements, Test Procedures and Apparatus for Testing the Smolder Resistance of Materials  
16 Used in Upholstered Furniture,” released for review and public comment on February 8, 2013 by  
17 the California Bureau of Electronic and Appliance Repair, Home Furnishings and Thermal  
18 Insulation.

19 2.6. “TB 117-2013 Effective Date” means the date on which Covered Products offered  
20 for sale in California are no longer required to comply with an open flame flammability standard  
21 such as the one set forth in TB 117.

22 2.7. “Treated” means the addition or application of any Chemical Flame Retardant to  
23 any polyurethane foam used as filling material in any Covered Product.

## 24 **3. INJUNCTIVE RELIEF**

25 3.1. **Reformulation of Covered Products.** Defendant shall comply with the following  
26 requirements to reformulate the Covered Products to eliminate exposures to TDCPP arising from  
27 the use of the Covered Products:  
28

1                   3.1.1. **Interim Compliance – TDCPP.** Any Covered Products in which the  
2 polyurethane foam has been Treated with TDCPP and which is manufactured, or distributed, sold,  
3 or offered for sale by Defendant in California after the Effective Date but before the TB 117-2013  
4 Effective Date shall be accompanied by a Clear and Reasonable Warning that complies with  
5 Section 3.1.2.

6                   3.1.2. **Proposition 65 Warnings.** A Clear and Reasonable Warning under this  
7 Consent Judgment shall state:

8                   WARNING: This product contains a chemical known to the State of California to  
9 cause cancer.

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

19                   3.1.3. **Final Compliance – All Chemical Flame Retardants.** As of the TB117-  
20 2013 Effective Date, Defendant shall not manufacture, or distribute, sell, or offer for sale in  
21 California any Covered Product in which the polyurethane foam has been Treated with any  
22 Chemical Flame Retardant, including but not limited to TDCPP.

23                   3.1.4. **Compliance Verification.** To ensure compliance with the reformulation  
24 provisions of this Consent Judgment, Defendant shall test or cause to be tested (which may  
25 include test results from an outside laboratory provided by each supplier) a sample from each lot  
26 of polyurethane foam received from each supplier for the presence of TDCPP and other Chemical  
27 Flame Retardants set forth in Exhibit A.

28

1                   **3.1.5. Specification and Certification From Suppliers.** To ensure compliance  
2 with the reformulation provisions of this Consent Judgment, Defendant shall issue specifications  
3 to its suppliers of polyurethane foam requiring that the polyurethane foam has not been treated  
4 with any Chemical Flame Retardant. Defendant shall obtain and maintain written certification  
5 from its suppliers of polyurethane foam confirming that all such foam received by Defendant for  
6 distribution in California after the TB 117-2013 Effective Date has not been treated with any  
7 Chemical Flame Retardant.

8                   **3.1.6. Warnings for Products in the Stream of Commerce.** Within 15 days  
9 following the Effective Date, Defendant shall provide warning materials by certified mail to each  
10 of its California customers in an effort to ensure that consumers receive clear and reasonable  
11 warnings in compliance with Proposition 65 for Covered Products that have not been  
12 reformulated or labeled in accordance with Section 3.1. Such warning materials shall include a  
13 reasonably sufficient number of warning stickers in order to permit the customer to place a  
14 warning tag on each Covered Product such customer has purchased from Defendant. The  
15 warning stickers shall contain the warning language set forth in Section 3.1.2. The warning  
16 materials shall also include a letter of instruction for the placement of the warnings. A sample of  
17 the letter is attached hereto as Exhibit B.

18                   **4. PENALTIES AND PAYMENT**

19                   4.1. Defendant shall pay to CEH the total sum of Forty-five thousand dollars  
20 (\$45,000), which shall be allocated as set forth in Sections 4.1.1-4.1.3 below. The payment shall  
21 be due as follows:

- 22                   (a) the first payment of \$22,500 shall be due by June 30, 2013; and  
23                   (b) the second payment of \$22,500 shall be due by August 15, 2013.

24 To the extent the Court does not approve this Consent Judgment before a payment is due, the  
25 funds paid by Defendant shall be held in trust pending the Court's approval of this Consent  
26 Judgment or returned if the Court issues a final Order denying CEH's motion for entry of the  
27 Consent Judgment.

28

1                   4.1.1. \$4,950 shall constitute a penalty pursuant to Cal. Health & Safety Code §  
2 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health & Safety Code  
3 § 25249.12.

4                   4.1.2. \$6,750 shall constitute a payment in lieu of civil penalty pursuant to Cal.  
5 Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such funds to  
6 continue its work of educating and protecting the public from exposures to toxic chemicals,  
7 including chemical flame retardants. CEH may also use a portion of such funds to monitor  
8 compliance with this Consent Judgment and to purchase and test Defendant's products to confirm  
9 compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH  
10 will use four percent (4%) of such funds to award grants to grassroots environmental justice  
11 groups working to educate and protect the public from exposures to toxic chemicals. The method  
12 of selection of such groups can be found at the CEH website at [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

13                   4.1.3. \$33,300 shall constitute reimbursement of CEH's reasonable attorneys'  
14 fees and costs.

## 15                   **5. ENFORCEMENT OF CONSENT JUDGMENT**

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

1           **6. MODIFICATION OF CONSENT JUDGMENT**

2           6.1. This Consent Judgment may only be modified by written agreement of CEH and  
3 Defendant, or upon motion of CEH or Defendant as provided by law.

4           **7. CLAIMS COVERED AND RELEASE**

5           7.1. This Consent Judgment is a full, final, and binding resolution between CEH acting  
6 in the public interest and Defendant and Defendant’s parents, officers, directors, shareholders,  
7 divisions, subdivisions, subsidiaries, partners, affiliated companies and their successors and  
8 assigns (“Defendant Releasees”) and all entities to whom they distribute or sell Covered Products,  
9 including, but not limited to, distributors, wholesalers, customers, retailers, franchisees,  
10 cooperative members, and licensees (“Downstream Defendant Releasees”), of all claims alleged  
11 in the Complaint in this Action arising from any violation of Proposition 65 that have been or  
12 could have been asserted in the public interest against Defendant and Downstream Defendant  
13 Releasees, regarding the failure to warn about exposure to TDCPP in the Covered Products  
14 manufactured, distributed, or sold by Defendant prior to the Effective Date.

15           7.2. CEH, for itself releases, waives, and forever discharges any and all claims alleged  
16 in the Complaint against Defendant and Downstream Defendant Releasees arising from any  
17 violation of Proposition 65 that have been or could have been asserted regarding the failure to  
18 warn about exposure to TDCPP in connection with Covered Products manufactured, distributed,  
19 or sold by Defendants prior to the Effective Date.

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

24           **8. PROVISION OF NOTICE**

25           8.1. When any Party is entitled to receive any notice under this Consent Judgment, the  
26 notice shall be sent by first class and electronic mail as follows:

27                   8.1.1. **Notices to Defendants.** The persons for Defendants to receive notices  
28 pursuant to this Consent Judgment shall be:

1  
2 Jeff Yao  
3 Victory Land Group, Inc.  
4 1350 Munger Road  
5 Bartlett, IL 60103-1698

6  
7  
8  
9  
10  
11  
12  
13 8.1.2. **Notices to Plaintiff.** The persons for CEH to receive notices pursuant to  
14 this Consent Judgment shall be:

15  
16 Rick Franco  
17 Center for Environmental Health  
18 2201 Broadway, Suite 302  
19 Oakland, California 94612  
20 rick@ceh.org

21  
22 Mark Todzo  
23 Lexington Law Group  
24 503 Divisadero Street  
25 San Francisco, CA 94117  
26 mtodzo@lexlawgroup.com

27  
28 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.

## 29 **9. COURT APPROVAL**

30 9.1. This Consent Judgment shall become effective on the Effective Date, provided  
31 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
32 Defendant shall support approval of such Motion.

33 9.2. If this Consent Judgment is not entered by the Court, it shall be of no force or  
34 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
35 purpose.

## 36 **10. GOVERNING LAW AND CONSTRUCTION**

37 10.1. The terms and obligations arising from this Consent Judgment shall be construed  
38 and enforced in accordance with the laws of the State of California.

## 39 **11. ENTIRE AGREEMENT**

40 11.1. This Consent Judgment contains the sole and entire agreement and understanding  
41 of CEH and Defendant with respect to the entire subject matter hereof, and any and all prior



1 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
2 merged herein and therein.

3 11.2. There are no warranties, representations, or other agreements between CEH and  
4 Defendant except as expressly set forth herein. No representations, oral or otherwise, express or  
5 implied, other than those specifically referred to in this Consent Judgment have been made by any  
6 Party hereto.

7 11.3. No other agreements not specifically contained or referenced herein, oral or  
8 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
9 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
10 any of the Parties hereto only to the extent that they are expressly incorporated herein.

11 11.4. No supplementation, modification, waiver, or termination of this Consent  
12 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

13 11.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or  
14 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall  
15 such waiver constitute a continuing waiver.

16 **12. RETENTION OF JURISDICTION**

17 12.1. This Court shall retain jurisdiction of this matter to implement or modify the  
18 Consent Judgment.

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

20 13.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized  
21 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
22 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

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

24 14.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
25 against another entity on terms that are different from those contained in this Consent Judgment.

26 **15. EXECUTION IN COUNTERPARTS**

27 15.1. The stipulations to this Consent Judgment may be executed in counterparts and by  
28 means of facsimile, which taken together shall be deemed to constitute one document.

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

IT IS SO STIPULATED:

Dated: June 20, 2013

CENTER FOR ENVIRONMENTAL HEALTH

*[Signature]*

*Carmel Pizarro*

Printed Name

*Associate Director*

Title

Dated: June 4, 2013

VICTORY LAND GROUP, INC.

*[Signature]*

Jeff Yao

Printed Name

President

Title

IT IS SO ORDERED, ADJUDGED,  
AND DECREED:

Dated: \_\_\_\_\_, 2013

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

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

**EXHIBIT A**

<b>CHEMICAL FLAME RETARDANT</b>	<b>CAS NUMBER</b>
Tris(1,3-dichloro-2-propyl) phosphate (TDCPP)	13674-87-8
tris(2-chloroethyl) phosphate (TCEP)	115-96-8
tris(1-chloro-2-propyl) phosphate (TCPP)	13674-84-5
2-ethylhexyl tetrabromobenzoate (TBB)	183658-27-7
bis(2-ethylhexyl)-2,3,4,5-tetrabromophthalate (TBPH)	26040-51-7
Triphenylphosphate (TPP)	115-86-6
2,2-bis(chloromethyl) trimethylene bis(bis(2-chloroethyl) phosphate) (V6)	38051-10-4
4-(tert-butyl)phenyl diphenyl phosphate (MDPP)	56803-37-3
bis(tert-butylphenyl) phenyl phosphate (DBPP)	65652-41-7
tris(4-tert-butylphenyl) phosphate (TBPP)	78-33-1 28777-70-0
Pentabromodiphenyl ethers	32534-81-9
Octabromodiphenyl ethers	32536-52-0
Decabromobiphenyl ether	1163-19-5

**EXHIBIT B**

Victory Land Group, Inc.  
1350 Munger Road  
Bartlett, IL 60103

**IMPORTANT LEGAL NOTICE**

Date:

Attention: Purchasers of Victory Land Products

Subject: **California Prop 65 Warnings**

\*\*\*\*\*

This letter is to advise you that Victory Land Group, Inc (VLG) products listed below expose users of those products to chemical(s) known to the State of California to cause cancer. Pursuant to the California Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”), the purchasers and users of products containing known chemical(s) must be given clear and reasonable warning. The following Victory Land products contain a chemical listed pursuant to the Proposition 65 and require a warning:

- 07-2238 Recliner with Rocker
- 07-2237 Sleeper Sofa

Although VLG has begun labeling these products with proper warnings, you may have in your possession certain products that were manufactured and distributed before the new labeling was implemented. Enclosed are [Insert #] of warning stickers. The warning stickers must be affixed to the package of any product still in a box and to the hang-tag for any product that is out of the box so that they are conspicuous and likely to be read and understood by an ordinary individual under customary conditions of purchase.

Please have your California stores associates contact VLG’s customer service line, 1-800-933-0527, if you need additional warning stickers or additional information regarding how to use them.

Please note that failure to provide a Proposition 65 warning for the listed products may subject you to legal action by the California Attorney General, County District Attorneys or various citizen groups, wherein monetary penalties of up to \$2,500 per violation could be sought.

Sincerely,

Jeff Yao  
President  
Victory Land Group, Inc.