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17 CENTER FOR ENVIRONMENTAL HEALTH

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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 RE: VICTORY
LAND GROUP, INC.**

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

1 or any other pending or future legal proceedings. This Consent Judgment is the product of
2 negotiation and compromise and is accepted by the Parties solely for purposes of settling,
3 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. “Chemical
7 Flame Retardant” does not include any chemical that has been rated as a Benchmark 4 chemical
8 pursuant to Clean Production Action’s GreenScreen ([http://www.cleanproduction.org/
9 Green.Greenscreen.php](http://www.cleanproduction.org/Green.Greenscreen.php)).

10 2.2. “Covered Products” means foam-cushioned upholstered furniture manufactured,
11 distributed, and/or sold by Defendant in California.

12 2.3. “Effective Date” means the date on which the Court enters this Consent Judgment.

13 2.4. “Listed Chemical Flame Retardants” means Tris(1,3-dichloro-2-propyl) phosphate
14 (“TDCPP”), Tris(2-chloroethyl) phosphate (“TCEP”), and Tris(2,3-dibromopropyl)phosphate
15 (“TDBPP”).

16 2.5. “Manufacture Date” means the date the Covered Product was manufactured and
17 as may be indicated on a tag attached to the Covered Product.

18 2.6. “TB 117” means Technical Bulletin No. 117, entitled “Requirements, Test
19 Procedures and Apparatus for Testing the Flame Retardance of Filling Materials Used in
20 Upholstered Furniture,” dated March 2000.

21 2.7. “TB 117-2013” means the proposed Technical Bulletin 117-2013, entitled
22 “Requirements, Test Procedures and Apparatus for Testing the Smolder Resistance of Materials
23 Used in Upholstered Furniture,” released for review and public comment on February 8, 2013
24 (and re-released on August 19, 2013) by the California Bureau of Electronic and Appliance
25 Repair, Home Furnishings and Thermal Insulation.

26 2.8. “TB 117-2013 Effective Date” means the date on which filling materials and cover
27 fabrics in upholstered furniture are required to meet the fire retardant requirements in TB 117-

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1 2013 pursuant to the proposed amendments to Section 1374 of Article 2 of Title 4 of the
2 California Code of Regulations.

3 2.9. "Treated" means the addition or application of any Chemical Flame Retardant to
4 any polyurethane foam used as filling material in any Covered Product.

5 2.10. "Untreated Foam" means polyurethane foam that has not been Treated with any
6 Chemical Flame Retardant.

7 **3. INJUNCTIVE RELIEF**

8 3.1. **Reformulation of Covered Products.** Defendant shall comply with the following
9 requirements to reformulate the Covered Products to eliminate exposures to TDCPP arising from
10 the use of the Covered Products:

11 3.1.1. **Listed Chemical Flame Retardants – All Covered Products.** As of the
12 Effective Date, a Settling Defendant shall not distribute, sell, or offer for sale in California any
13 Covered Product that has been Treated with any Listed Chemical Flame Retardant and which has
14 a Manufacture Date that is on or later than the Effective Date.

15 3.1.1.1. To ensure compliance with the reformulation provisions of this
16 Section, following the Effective Date, Defendant shall directly or through its supply chain issue
17 specifications to its suppliers of polyurethane foam, cushioning, or padding used as filling
18 material in any Covered Product requiring that such components have not been Treated with
19 Listed Chemical Flame Retardants in accordance with the requirements of this Section 3.1.1.
20 Each Settling Defendant shall obtain and maintain written certification(s) from its suppliers of
21 polyurethane foam, cushioning, or padding confirming that all such foam received by that Settling
22 Defendant for distribution in California has not been Treated with Listed Chemical Flame
23 Retardants.

24 3.1.2. **Interim Compliance – TDCPP.** Any Covered Products in which the
25 polyurethane foam has been Treated with TDCPP and which is distributed, sold, or offered for
26 sale by Defendant in California after the Effective Date shall be accompanied by a Clear and
27 Reasonable Warning that complies with Section 3.1.4.

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1 **3.1.3. Warnings for Products in the Stream of Commerce.** In an effort to
2 ensure that consumers receive clear and reasonable warnings in compliance with Proposition 65
3 for Covered Products that have not been reformulated pursuant to Section 3.1.1 or labeled in
4 accordance with Section 3.1.2, within 30 days following the Effective Date, Defendant shall
5 provide warning materials by certified mail to each of its California retailers or distributors to
6 whom Defendant reasonably believes it sold Covered Products that contained or may have
7 contained TDCPP on or after October 31, 2011. Such warning materials shall include a
8 reasonably sufficient number of hang tags in order to permit the retailer or distributor to place a
9 warning tag on each Covered Product such customer has purchased from Defendant. The hang
10 tags shall contain the warning language set forth in Section 3.1.4. The warning materials shall
11 also include a letter of instruction for the placement of the hang tags, and a Notice and
12 Acknowledgment postcard.

13 **3.1.4. Proposition 65 Warnings.** A Clear and Reasonable Warning under this
14 Consent Judgment shall state:

15 WARNING: This product contains tris(1,3-dichloro-2-propyl) phosphate
16 (“TDCPP”), a chemical known to the State of California to cause cancer.

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

26 **3.2. Optional Additional Reformulation – Use of Untreated Foam.** In order
27 Defendant to be eligible for a waiver of the additional penalty/payment in lieu of penalty
28 payments set forth in Section 4.1.5 below, Defendant shall undertake the additional actions to

1 reduce or eliminate the use of Chemical Flame Retardants set forth herein. As of the TB117-2013
2 Effective Date, Defendant shall not manufacture for sale in California any Covered Product that
3 has been Treated with any Chemical Flame Retardant. In order to avoid the additional payments,
4 Defendant must provide written certification to CEH of its use of only Untreated Foam within 30
5 days following the TB 117-2013 Effective Date.

6 **3.2.1. Specification To and Certification From Suppliers.** To ensure
7 compliance with the provisions of this Section 3.2, to the extent that Defendant opts for additional
8 reformulation, it shall directly or through its supply chain issue specifications to its suppliers of
9 polyurethane foam, cushioning, or padding used as filling material in any Covered Product
10 requiring that such components shall use only Untreated Foam. Defendant shall not be deemed in
11 violation of the requirements of this Section 3.2 for any Covered Product to the extent that: (a)
12 Defendant has relied on a written certification from its vendor that supplied a Covered Product or
13 the polyurethane foam, cushioning, or padding used as filling material in the Covered Product is
14 made with only Untreated Foam, and/or (b) Defendant has obtained a test result from a certified
15 laboratory reporting that the Covered Product's polyurethane foam, cushioning, or padding used
16 as filling material has been made with Untreated Foam. Defendant shall obtain and maintain
17 written certification(s) from its suppliers of polyurethane foam, cushioning, or padding
18 confirming that all such foam received by Defendant for distribution in California is Untreated
19 Foam.

20 **4. PENALTIES AND PAYMENT**

21 4.1. Defendant shall initially pay to CEH the total sum of Forty-five thousand dollars
22 (\$45,000), which shall be allocated as follows:

23 4.1.1. \$4,950 shall constitute a penalty pursuant to Cal. Health & Safety Code §
24 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health & Safety Code
25 § 25249.12.

26 4.1.2. \$6,750 shall constitute a payment in lieu of civil penalty pursuant to Cal.
27 Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such funds to
28 continue its work of educating and protecting the public from exposures to toxic chemicals,

1 including chemical flame retardants. CEH may also use a portion of such funds to monitor
2 compliance with this Consent Judgment and to purchase and test Defendant's products to confirm
3 compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH
4 will use four percent (4%) of such funds to award grants to grassroots environmental justice
5 groups working to educate and protect the public from exposures to toxic chemicals. The method
6 of selection of such groups can be found at the CEH website at www.ceh.org/justicefund.

7 4.1.3. \$33,300 shall constitute reimbursement of CEH's reasonable attorneys'
8 fees and costs.

9 4.1.4. The payments required under Sections 4.1.1-4.1.3 shall be made in three
10 separate checks, all to be delivered within 10 days following the Effective Date. The payments
11 required pursuant to Sections 4.1.1 and 4.1.2 shall each be made payable CEH. The payment
12 required pursuant to Section 4.1.3 shall be made payable to Lexington Law Group. All checks
13 shall be delivered to Mark Todzo at Lexington Law Group at the address set forth in Section 8.
14 For any such payments made by Defendant prior to the Effective Date, these funds shall be held
15 in trust pending the Court's approval of this Consent Judgment or returned if the Court issues a
16 final Order denying CEH's motion for entry of the Consent Judgment.

17 4.1.5. In the event that Defendant elects not to certify its compliance with Section
18 3.2 in accordance with that Section, within 30 days following the TB 117-2013 Effective Date,
19 Defendant must make an additional payment of \$17,500, which shall be paid in two separate
20 checks, each payable to CEH, to be allocated as follows:

21 4.1.5.1. \$7,000 shall constitute a penalty pursuant to Cal. Health &
22 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health
23 & Safety Code § 25249.12.

24 4.1.5.2. \$10,500 shall constitute a payment in lieu of civil penalty
25 pursuant to Cal. Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such
26 funds to continue its work of educating and protecting the public from exposures to toxic
27 chemicals, including chemical flame retardants. CEH may also use a portion of such funds to
28 monitor compliance with this Consent Judgment and to purchase and test Defendant's products to

1 confirm compliance. In addition, as part of its Community Environmental Action and Justice
2 Fund, CEH will use four percent (4%) of such funds to award grants to grassroots environmental
3 justice groups working to educate and protect the public from exposures to toxic chemicals. The
4 method of selection of such groups can be found at the CEH website at www.ceh.org/justicefund.

5 **5. ENFORCEMENT OF CONSENT JUDGMENT**

6 5.1. CEH may, by motion or application for an order to show cause before the Superior
7 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.
8 Prior to bringing any motion or application to enforce the requirements of Section 3 above, CEH
9 shall provide Defendant with a Notice of Violation and a copy of any test results which
10 purportedly support CEH's Notice of Violation. The Parties shall then meet and confer regarding
11 the basis for CEH's anticipated motion or application in an attempt to resolve it informally,
12 including providing Defendant a reasonable opportunity of at least thirty (30) days to cure any
13 alleged violation. Should such attempts at informal resolution fail, CEH may file its enforcement
14 motion or application. The prevailing party on any motion to enforce this Consent Judgment
15 shall be entitled to its reasonable attorney's fees and costs incurred as a result of such motion or
16 application. This Consent Judgment may only be enforced by the Parties.

17 **6. MODIFICATION OF CONSENT JUDGMENT**

18 6.1. This Consent Judgment may only be modified by written agreement of CEH and
19 Defendant, or upon motion of CEH or Defendant as provided by law.

20 **7. CLAIMS COVERED AND RELEASE**

21 7.1. This Consent Judgment is a full, final, and binding resolution between CEH acting
22 in the public interest and Defendant and Defendant's parents, officers, directors, shareholders,
23 divisions, subdivisions, subsidiaries, partners, affiliated companies and their successors and
24 assigns ("Defendant Releasees") and all entities to whom they distribute or sell Covered Products,
25 including, but not limited to, distributors, wholesalers, customers, retailers, franchisees,
26 cooperative members, and licensees ("Downstream Defendant Releasees"), of all claims alleged
27 in the Complaint in this Action arising from any violation of Proposition 65 that have been or
28 could have been asserted in the public interest against Defendant and Downstream Defendant

1 Releasees, regarding the failure to warn about exposure to TDCPP in the Covered Products
2 manufactured, distributed, or sold by Defendant prior to the Effective Date.

3 7.2. CEH, for itself releases, waives, and forever discharges any and all claims alleged
4 in the Complaint against Defendant and Downstream Defendant Releasees arising from any
5 violation of Proposition 65 that have been or could have been asserted regarding the failure to
6 warn about exposure to TDCPP in connection with Covered Products manufactured, distributed,
7 or sold by Defendant prior to the Effective Date.

8 7.3. Compliance with the terms of this Consent Judgment by Defendant and the
9 Downstream Defendant Releasees shall constitute compliance with Proposition 65 by Defendant
10 and Downstream Defendant Releasees with respect to any alleged failure to warn about any
11 Listed Chemical Flame Retardants in Covered Products manufactured, distributed, or sold by
12 Defendant after the Effective Date.

13 **8. PROVISION OF NOTICE**

14 8.1. When any Party is entitled to receive any notice under this Consent Judgment, the
15 notice shall be sent by first class and electronic mail as follows:

16 8.1.1. **Notices to Defendant.** The persons for Defendant to receive notices
17 pursuant to this Consent Judgment shall be:

18
19 Jeff Yao
20 Victory Land Group, Inc.
1350 Munger Road
Bartlett, IL 60103-1698

21 8.1.2. **Notices to Plaintiff.** The persons for CEH to receive notices pursuant to
22 this Consent Judgment shall be:

23
24 Rick Franco
25 Center for Environmental Health
2201 Broadway, Suite 302
Oakland, California 94612
rick@ceh.org

26
27 Mark Todzo
28 Lexington Law Group
503 Divisadero Street

1 San Francisco, CA 94117
2 mtodzo@lexlawgroup.com

3 8.2. Any Party may modify the person and address to whom the notice is to be sent by
4 sending the other Parties notice by first class and electronic mail.

5 **9. COURT APPROVAL**

6 9.1. This Consent Judgment shall become effective on the Effective Date, provided
7 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and
8 Defendant shall support approval of such Motion.

9 9.2. If this Consent Judgment is not entered by the Court, it shall be of no force or
10 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
11 purpose.

12 **10. GOVERNING LAW AND CONSTRUCTION**

13 10.1. The terms and obligations arising from this Consent Judgment shall be construed
14 and enforced in accordance with the laws of the State of California.

15 **11. ENTIRE AGREEMENT**

16 11.1. This Consent Judgment contains the sole and entire agreement and understanding
17 of CEH and Defendant with respect to the entire subject matter hereof, and any and all prior
18 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby
19 merged herein and therein.

20 11.2. There are no warranties, representations, or other agreements between CEH and
21 Defendant except as expressly set forth herein. No representations, oral or otherwise, express or
22 implied, other than those specifically referred to in this Consent Judgment have been made by any
23 Party hereto.

24 11.3. No other agreements not specifically contained or referenced herein, oral or
25 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements
26 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind
27 any of the Parties hereto only to the extent that they are expressly incorporated herein.

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1 11.4. No supplementation, modification, waiver, or termination of this Consent
2 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

3 11.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
4 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
5 such waiver constitute a continuing waiver.

6 **12. RETENTION OF JURISDICTION**

7 12.1. This Court shall retain jurisdiction of this matter to implement or modify the
8 Consent Judgment.

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

10 13.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized
11 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and
12 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

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

14 14.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim
15 against another entity on terms that are different from those contained in this Consent Judgment.

16 **15. EXECUTION IN COUNTERPARTS**

17 15.1. The stipulations to this Consent Judgment may be executed in counterparts and by
18 means of facsimile, which taken together shall be deemed to constitute one document.

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IT IS SO STIPULATED:

Dated: Nov 25, 2013

CENTER FOR ENVIRONMENTAL HEALTH



CHARLIE PIZZANO
Printed Name

ASSOCIATE DIRECTOR
Title

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Dated: Nov. 1, 2013

VICTORY LAND GROUP, INC.

Jeff Yao

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