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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 BRITAX CHILD SAFETY, INC., *et al.*,
21 Defendants.

Case No. RG-13683725

**[PROPOSED] CONSENT
JUDGMENT RE: AMINI
INNOVATION CORP.**

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 Amini Innovation Corp. (“Defendant”)
26 to settle claims asserted by CEH against Defendant as set forth in the operative Complaint in the
27 matter *Center for Environmental Health v. Britax Child Safety, Inc., et al.*, Alameda County
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1 Superior Court Case No. RG-13683725 (the “Action”). CEH and Defendant are referred to
2 collectively as the “Parties.”

3 1.2. On June 18, 2013, CEH served a “Notice of Violation” (the “Notice”) relating to
4 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 Technical Bulletin 117-2013, entitled “Requirements, Test
22 Procedures and Apparatus for Testing the Smolder Resistance of Materials Used in Upholstered
23 Furniture,” approved on November 21, 2013 by the California Bureau of Electronic and
24 Appliance Repair, Home Furnishings and Thermal Insulation.

25 2.8. “TB 117-2013 Effective Date” means the date on which filling materials and cover
26 fabrics in upholstered furniture are required to meet the fire retardant requirements in TB 117-
27 2013 pursuant to the amendments to Section 1374 of Article 2 of Title 4 of the California Code of
28 Regulations.

1 2.9. “Treated” means the addition or application of any Chemical Flame Retardant to
2 any polyurethane foam, cushioning, or padding used as filling material in any Covered Product.

3 2.10. “Untreated Foam” means polyurethane foam that has not been Treated with any
4 Chemical Flame Retardant.

5 **3. INJUNCTIVE RELIEF**

6 3.1. **Reformulation of Covered Products.** Defendant shall comply with the following
7 requirements to reformulate the Covered Products to eliminate exposures to TDCPP and other
8 Chemical Flame Retardants arising from the use of the Covered Products:

9 3.1.1. **Listed Chemical Flame Retardants – All Covered Products.** As of
10 October 1, 2014, Defendant shall not distribute, sell, or offer for sale in California any Covered
11 Product that has been Treated with any Listed Chemical Flame Retardant and which has a
12 Manufacture Date that is on or later than October 1, 2014.

13 3.1.1.1. **Specification To and Certification From Suppliers.** To
14 ensure compliance with the reformulation provisions of this Section 3.1.1, following October 1,
15 2014, Defendant shall directly or through its supply chain issue specifications to its suppliers of
16 polyurethane foam, cushioning, or padding used as filling material in any Covered Product
17 requiring that such components have not been Treated with Listed Chemical Flame Retardants in
18 accordance with the requirements of this Section 3.1.1. Defendant shall obtain and maintain
19 written certification(s) from its suppliers of polyurethane foam, cushioning, or padding
20 confirming that all such foam received by Defendant for distribution in California has not been
21 Treated with Listed Chemical Flame Retardants. Defendant shall not be deemed in violation of
22 the requirements of this Section 3.1.1 for any Covered Product to the extent: (a) it has relied on a
23 written certification from its vendor that supplied a Covered Product or the polyurethane foam,
24 cushioning, or padding used as filling material in the Covered Product that such Covered Product,
25 foam, cushioning or padding is made with only Untreated Foam, and/or, if such certification is
26 not relied on or has previously been demonstrated to be invalid, (b) it has obtained a test result
27 from an independent third party certified laboratory reporting that the Covered Product’s
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1 polyurethane foam, cushioning, or padding used as filling material has been made with no Listed
2 Chemical Flame Retardants.

3 **3.1.2. Interim Compliance – All Covered Products.** Any Covered Products in
4 which the polyurethane foam has been Treated with Listed Chemical Flame Retardants and which
5 is distributed, sold, or offered for sale by Defendant in California after October 1, 2014 shall be
6 accompanied by a Clear and Reasonable Warning that complies with Section 3.1.4.

7 **3.1.3. Warnings for Products in the Stream of Commerce.** In an effort to
8 ensure that consumers receive clear and reasonable warnings in compliance with Proposition 65
9 for Covered Products that have not been reformulated pursuant to Section 3.1.1 or labeled in
10 accordance with Section 3.1.2, within 30 days following October 1, 2014, Defendant shall
11 provide warning materials by certified mail to each of its California retailers or distributors to
12 whom Defendant reasonably believes it sold Covered Products that contained or may have
13 contained TDCPP on or after October 31, 2011. Such warning materials shall include a
14 reasonably sufficient number of hang tags in order to permit the retailer or distributor to place a
15 warning tag on each Covered Product such customer has purchased from Defendant. The hang
16 tags shall contain the warning language set forth in Section 3.1.4. The warning materials shall
17 also include a letter of instruction for the placement of the hang tags, and a Notice and
18 Acknowledgment postcard.

19 **3.1.4. Proposition 65 Warnings.** A Clear and Reasonable Warning under this
20 Consent Judgment shall state:

21 WARNING: This product contains tris(1,3-dichloro-2-propyl) phosphate
22 (“TDCPP”) [and/or tris(2-chloroethyl) phosphate (“TCEP”) and/or tris(2,3-
23 dibromopropyl) phosphate (“TDBPP”)], a chemical[s] known to the State of
24 California to cause cancer.¹

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26 ¹ The regulatory safe harbor warning language specified in 27 C.C.R. § 25603.2 may also be used
27 if Defendant had begun to use it, prior to the Effective Date. Should Defendant seek to use
28 alternative warning language, other than the language specified above or the safe harbor warning
specified in 27 C.C.R. § 25603.2, or seek to use an alternate method of transmission of the
warning, it must obtain the Court’s approval of its proposed alternative and provide all Parties

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

10 **3.2. Optional Additional Reformulation – Use of Untreated Foam.** In order
11 Defendant to be eligible for a waiver of the additional penalty/payment in lieu of penalty
12 payments set forth in Section 4.1.5 below, Defendant shall undertake the additional actions to
13 reduce or eliminate the use of Chemical Flame Retardants set forth herein. As of October 1,
14 2014, Defendant shall not manufacture or cause to be manufactured for sale in California any
15 Covered Product that has been Treated with any Chemical Flame Retardant. As of the TB 117-
16 2013 Effective Date, Defendant shall not distribute, sell, or offer for sale in California any
17 Covered Product that has been Treated with any Chemical Flame Retardant. In order to avoid the
18 additional payments, Defendant must provide written certification to CEH of its use of only
19 Untreated Foam within 30 days following the TB 117-2013 Effective Date.

20 **3.2.1. Specification To and Certification From Suppliers.** To ensure
21 compliance with the reformulation provisions of this Section 3.2, to the extent that Defendant
22 opts for additional reformulation, it shall directly or through its supply chain issue specifications
23 to its suppliers of polyurethane foam, cushioning, or padding used as filling material in any
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25 and the Office of the Attorney General with timely notice and the opportunity to comment or
26 object before the Court acts on the request. In the event that Defendant's application for Court
27 approval of an alternative warning is contested by CEH, the prevailing party shall be entitled to
28 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 Covered Product requiring that such components shall use only Untreated Foam. Defendant shall
2 not be deemed in violation of the requirements of this Section 3.2 for any Covered Product to the
3 extent: (a) it has relied on a written certification from its vendor that supplied a Covered Product
4 or the polyurethane foam, cushioning, or padding used as filling material in the Covered Product
5 is made with only Untreated Foam, and/or (b) has obtained a test result from a certified laboratory
6 reporting that the Covered Product's polyurethane foam, cushioning, or padding used as filling
7 material has been made with Untreated Foam. Defendant shall obtain and maintain written
8 certification(s) from its suppliers of polyurethane foam, cushioning, or padding confirming that
9 all such foam received by Defendant for distribution in California is Untreated Foam.

10 **4. PENALTIES AND PAYMENT**

11 4.1. Defendant shall initially pay to CEH the total sum of sixty thousand dollars
12 (\$60,000), which shall be allocated as follows:

13 4.1.1. \$6,600 shall constitute a penalty pursuant to Cal. Health & Safety Code §
14 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health & Safety Code
15 § 25249.12.

16 4.1.2. \$9,000 shall constitute a payment in lieu of civil penalty pursuant to Cal.
17 Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such funds to
18 continue its work of educating and protecting the public from exposures to toxic chemicals,
19 including chemical flame retardants. CEH may also use a portion of such funds to monitor
20 compliance with this Consent Judgment and to purchase and test Defendant's products to confirm
21 compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH
22 will use four percent (4%) of such funds to award grants to grassroots environmental justice
23 groups working to educate and protect the public from exposures to toxic chemicals. The method
24 of selection of such groups can be found at the CEH website at www.ceh.org/justicefund.

25 4.1.3. \$44,400 shall constitute reimbursement of CEH's reasonable attorneys'
26 fees and costs.

27 4.1.4. The payments required under Sections 4.1.1-4.1.3 shall be made in three
28 separate checks, all to be delivered within 10 days following the Effective Date. The payments

1 required pursuant to Sections 4.1.1 and 4.1.2 shall each be made payable to CEH. The payment
2 required pursuant to Section 4.1.3 shall be made payable to Lexington Law Group. All checks
3 shall be delivered to Mark Todzo at Lexington Law Group at the address set forth in Section 8.

4 4.1.5. In the event that Defendant elects not to certify its compliance with Section
5 3.2 in accordance with that Section, within 30 days following the TB 117-2013 Effective Date,
6 Defendant must make an additional payment of \$24,000, which shall be paid in two separate
7 checks, each payable to CEH, to be allocated as follows:

8 4.1.5.1. \$9,600 shall constitute a penalty pursuant to Cal. Health &
9 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health
10 & Safety Code § 25249.12.

11 4.1.5.2. \$14,400 shall constitute a payment in lieu of civil penalty
12 pursuant to Cal. Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such
13 funds to continue its work of educating and protecting the public from exposures to toxic
14 chemicals, including chemical flame retardants. CEH may also use a portion of such funds to
15 monitor compliance with this Consent Judgment and to purchase and test Defendant's products to
16 confirm compliance. In addition, as part of its Community Environmental Action and Justice
17 Fund, CEH will use four percent (4%) of such funds to award grants to grassroots environmental
18 justice groups working to educate and protect the public from exposures to toxic chemicals. The
19 method of selection of such groups can be found at the CEH website at www.ceb.org/justicefund.

20 **5. ENFORCEMENT OF CONSENT JUDGMENT**

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

1 motion or application. The prevailing party on any motion to enforce this Consent Judgment
2 shall be entitled to its reasonable attorney's fees and costs incurred as a result of such motion or
3 application. This Consent Judgment may only be enforced by the Parties.

4 **6. MODIFICATION OF CONSENT JUDGMENT**

5 6.1. This Consent Judgment may only be modified by written agreement of CEH and
6 Defendant, or upon motion of CEH or Defendant as provided by law.

7 **7. CLAIMS COVERED AND RELEASE**

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

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

23 7.3. Compliance with the terms of this Consent Judgment by Defendant and the
24 Downstream Defendant Releasees shall constitute compliance with Proposition 65 by Defendant
25 and Downstream Defendant Releasees with respect to any alleged failure to warn about TDCPP
26 in Covered Products manufactured, distributed, or sold by Defendant after the Effective Date.
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1 **8. PROVISION OF NOTICE**

2 8.1. When any Party is entitled to receive any notice under this Consent Judgment, the
3 notice shall be sent by first class and electronic mail as follows:

4 8.1.1. **Notices to Defendant.** The persons for Defendant to receive notices
5 pursuant to this Consent Judgment shall be:

6 Michael Amini
7 Amini Innovation Corp.
8 8725 Rex Road
9 Pico Rivera, CA 90660
10 michael@amini.com

11 Sid Mendlovitz
12 Law Offices of Mendlovitz & Sanchez
13 4010 Watson Plaza, Suite 100
14 Lakewood, CA 90712
15 sm@jvslegal.com

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

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

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

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.

1 9.2. If this Consent Judgment is not entered by the Court, it shall be of no force or
2 effect and shall not be introduced into evidence or otherwise used in any proceeding for any
3 purpose.

4 **10. GOVERNING LAW AND CONSTRUCTION**

5 10.1. The terms and obligations arising from this Consent Judgment shall be construed
6 and enforced in accordance with the laws of the State of California.

7 **11. ENTIRE AGREEMENT**

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

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

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

20 11.4. No supplementation, modification, waiver, or termination of this Consent
21 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

22 11.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or
23 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall
24 such waiver constitute a continuing waiver.

25 **12. RETENTION OF JURISDICTION**

26 12.1. This Court shall retain jurisdiction of this matter to implement or modify the
27 Consent Judgment.

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13. AUTHORITY TO STIPULATE TO CONSENT JUDGMENT

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

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: _____, 2014 **CENTER FOR ENVIRONMENTAL HEALTH**

Printed Name

Title

Dated: 4-22, 2014 **AMINI INNOVATION CORP.**



Printed Name

MARTIN PLOY

Title

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

Dated: _____, 2014

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