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16 Attorneys for Plaintiff  
17 CENTER FOR ENVIRONMENTAL HEALTH

18  
19  
20 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
21 FOR THE COUNTY OF ALAMEDA

22 CENTER FOR ENVIRONMENTAL  
23 HEALTH, a non-profit corporation,

24 Plaintiff,

25 v.

26 ACOUSTICAL SOLUTIONS, INC., *et al.*,  
27 Defendants.

28 Case No. RG-13707315

**[PROPOSED] CONSENT  
JUDGMENT RE: RADIAL  
ENGINEERING LTD.**

**1. INTRODUCTION**

1.1. This Consent Judgment is entered into by Plaintiff Center for Environmental Health, a non-profit corporation (“CEH”), and Defendant Radial Engineering Ltd. (“Defendant”) to settle claims asserted by CEH against Defendant as set forth in the operative Complaint in the matter *Center for Environmental Health v. Acoustical Solutions, Inc., et al.*, Alameda County

1 Superior Court Case No. RG-13707315 (the “Action”). CEH and Defendant are referred to  
2 collectively as the “Parties.”

3 1.2. On November 15, 2013, CEH served a “Notice of Violation” (the “Notice”)  
4 relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition  
5 65”) on Defendant, the California Attorney General, the District Attorneys of every County in the  
6 State of California, and the City Attorneys for every City in State of California with a population  
7 greater than 750,000. The Notice alleges violations of Proposition 65 with respect to the presence  
8 of tris (1,3-dichloro-2-propyl) phosphate (“TDCPP”) in acoustic and soundproofing foam  
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, expressly denies any wrongdoing  
27 whatsoever, and contends that all products it sells comply with all laws and are safe for their  
28 intended use. Except as specifically provided herein, nothing in this Consent Judgment shall

1 prejudice, waive, or impair any right, remedy, argument, or defense either Party may have in this  
2 or any other pending or future legal proceedings. This Consent Judgment is the product of  
3 negotiation and compromise and is accepted by the Parties solely for purposes of settling,  
4 compromising, and resolving issues disputed in this Action.

## 5 **2. DEFINITIONS**

6 2.1. “Chemical Flame Retardant” means any halogenated or phosphorous-based  
7 chemical compound used for the purpose of resisting or retarding the spread of fire. “Chemical  
8 Flame Retardant” does not include (a) any chemical that has been rated as a Benchmark 4  
9 chemical pursuant to Clean Production Action’s GreenScreen ([http://www.cleanproduction.org/  
10 Green.Greenscreen.php](http://www.cleanproduction.org/Green.Greenscreen.php)); or (b) ammonium polyphosphate.

11 2.2. “Covered Products” means acoustic and/or soundproofing foam manufactured,  
12 distributed, and/or sold by Defendant in California.

13 2.3. “Effective Date” means the date on which the Court enters this Consent Judgment.

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

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

19 2.6. “Treated” means the addition or application of any Chemical Flame Retardant to  
20 any polyurethane foam used in any Covered Product.

21 2.7. “Untreated Foam” means polyurethane foam that has not been Treated with any  
22 Chemical Flame Retardant.

## 23 **3. INJUNCTIVE RELIEF**

24 3.1. **Reformulation of Covered Products.** Defendant shall comply with the following  
25 requirements to reformulate the Covered Products to eliminate exposures to TDCPP and other  
26 Chemical Flame Retardants arising from the use of the Covered Products:

27 3.1.1. **Reformulation of Covered Products.** As of the Effective Date,  
28 Defendant shall not distribute, sell, or offer for sale in California any Covered Product that has

1 been Treated with any Chemical Flame Retardant and which has a Manufacture Date that is on or  
2 later than the Effective Date.

3 3.1.1.1. Prior to the Effective Date, to ensure compliance with the  
4 reformulation provisions of this Section following the Effective Date, Defendant shall directly or  
5 through its supply chain issue specifications to its suppliers of Covered Products and/or  
6 polyurethane foam used in any Covered Product requiring that such products and/or foam not be  
7 Treated with any Chemical Flame Retardants in accordance with the requirements of Section  
8 3.1.1. Defendant shall obtain and maintain written certification(s) from its suppliers confirming  
9 that all such Covered Products and/or foam received by Defendant for distribution in California  
10 have not been Treated with any Chemical Flame Retardants. Defendant shall not be deemed in  
11 violation of the requirements of Section 3.1.1 for any Covered Product to the extent: (a) it has  
12 relied on a written certification from its vendor that supplied a Covered Product that such  
13 Covered Product is made with only Untreated Foam, and/or, if such certification is not relied on  
14 or has previously been demonstrated to be invalid, (b) it has obtained a test result from an  
15 independent third party certified laboratory reporting that the Covered Product has been made  
16 with no Chemical Flame Retardants.

17 3.1.2. **Interim Compliance – All Covered Products.** Any Covered Products in  
18 which the polyurethane foam has been Treated with any Listed Chemical Flame Retardant and  
19 which is distributed, sold, or offered for sale by Defendant in California after the Effective Date  
20 shall be accompanied by a Clear and Reasonable Warning that complies with Section 3.1.4.

21 3.1.3. **Warnings for Products in the Stream of Commerce.** For Covered  
22 Products Settling Defendant sold to a retailer after October 31, 2011 that have not been  
23 reformulated pursuant to Section 3.1.1 or labeled in accordance with Section 3.1.2, and for which  
24 the Settling Defendant does not have actual knowledge that (i) the retailer is no longer holding  
25 such Covered Product in inventory for sale in California, or (ii) a Proposition 65 warning is  
26 already affixed to the Covered Product or is otherwise being provided by the retailer, the Settling  
27 Defendant shall within 30 days following the Effective Date either send to the retailer warning  
28

1 materials that comply with Section 3.1.4 for such Covered Products or direct the retailer to  
2 discontinue sale of the Covered Product in California.

3 3.1.4. **Proposition 65 Warnings.** A Clear and Reasonable Warning under this  
4 Consent Judgment shall state:

5 WARNING: This product contains TDCPP [and/or TCEP and/or TDBPP], a  
6 chemical[s] known to the State of California to cause cancer.<sup>1</sup>

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

#### 16 **4. PENALTIES AND PAYMENT**

17 4.1. Defendant shall initially pay to CEH the total sum of twenty thousand dollars  
18 (\$20,000), which shall be allocated as follows:

19 4.1.1. \$2,200 shall constitute a penalty pursuant to Cal. Health & Safety Code §  
20 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health & Safety Code  
21 § 25249.12.

22  
23 <sup>1</sup> The regulatory safe harbor warning language specified in 27 CCR § 25603.2 may also be used if  
24 Defendant had begun to use it, prior to the Effective Date. Should Defendant seek to use  
25 alternative warning language, other than the language specified above or the safe harbor warning  
26 specified in 27 CCR § 25603.2, or seek to use an alternate method of transmission of the warning,  
27 it must obtain the Court's approval of its proposed alternative and provide all Parties and the  
28 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                   4.1.2. \$3,000 shall constitute a payment in lieu of civil penalty pursuant to Cal.  
2 Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such funds to  
3 continue its work of educating and protecting the public from exposures to toxic chemicals,  
4 including chemical flame retardants. CEH may also use a portion of such funds to monitor  
5 compliance with this Consent Judgment and to purchase and test Defendant’s products to confirm  
6 compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH  
7 will use four percent (4%) of such funds to award grants to grassroots environmental justice  
8 groups working to educate and protect the public from exposures to toxic chemicals. The method  
9 of selection of such groups can be found at the CEH website at [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

10                   4.1.3. \$14,800 shall constitute reimbursement of CEH’s reasonable attorneys’  
11 fees and costs.

12                   4.1.4. The payments required under Sections 4.1.1-4.1.3 shall be made in three  
13 separate checks, all to be delivered within 10 days following the Effective Date. The payments  
14 required pursuant to Sections 4.1.1 and 4.1.2 shall each be made payable CEH. The payment  
15 required pursuant to Section 4.1.3 shall be made payable to Lexington Law Group. All checks  
16 shall be delivered to Mark Todzo at Lexington Law Group at the address set forth in Section 8.

17                   **5. ENFORCEMENT OF CONSENT JUDGMENT**

18                   5.1. Any party may, by motion or application for an order to show cause before the  
19 Superior Court of Alameda County, enforce the terms and conditions contained in this Consent  
20 Judgment. Prior to bringing any motion or application to enforce the requirements of Section 3  
21 above, CEH shall provide Defendant with a Notice of Violation and a copy of any test results  
22 which purportedly support CEH’s Notice of Violation. The Parties shall then meet and confer  
23 regarding the basis for CEH’s anticipated motion or application in an attempt to resolve it  
24 informally, including providing Defendant a reasonable opportunity of at least thirty (30) days to  
25 cure any alleged violation. Should such attempts at informal resolution fail, CEH may file its  
26 enforcement motion or application. The prevailing party on any motion to enforce this Consent  
27 Judgment shall be entitled to its reasonable attorney’s fees and costs incurred as a result of such  
28 motion or 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, and their respective successors and assigns (“Defendant  
8 Releasees”), and all entities to whom they distribute or sell or have distributed or sold Covered  
9 Products 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, TCEP and/or TDBPP in connection with Covered Products  
19 manufactured, distributed, or sold by Defendant 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 any  
23 Listed Chemical Flame Retardants in Covered Products manufactured, distributed, or sold by  
24 Defendant after the Effective Date.

25           **8. PROVISION OF NOTICE**

26           8.1. When any Party is entitled to receive any notice under this Consent Judgment, the  
27 notice shall be sent by first class and electronic mail as follows:  
28

1                   8.1.1. **Notices to Defendant.** The persons for Defendant to receive notices  
2 pursuant to this Consent Judgment shall be:

3                                 Peter Janis, CEO  
4                                 Radial Engineering, Ltd.  
5                                 1588 Kebet Way  
6                                 Port Coquitlam, BC V3C 5M5  
7                                 CANADA  
8                                 peterj@radialeng.com

9                   8.1.2. **Notices to Plaintiff.** The persons for CEH to receive notices pursuant to  
10 this Consent Judgment shall be:

11                                 Rick Franco  
12                                 Center for Environmental Health  
13                                 2201 Broadway, Suite 302  
14                                 Oakland, CA 94612  
15                                 rick@ceh.org

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

21           8.2. Any Party may modify the person and address to whom the notice is to be sent by  
22 sending the other Parties notice by first class and electronic mail.

23           **9. COURT APPROVAL**

24           9.1. This Consent Judgment shall become effective on the Effective Date, provided  
25 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
26 Defendant shall support approval of such Motion.

27           9.2. If this Consent Judgment is not entered by the Court, it shall be of no force or  
28 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
purpose.

**10. GOVERNING LAW AND CONSTRUCTION**

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



1           **11. ENTIRE AGREEMENT**

2           11.1. This Consent Judgment contains the sole and entire agreement and understanding  
3 of CEH and Defendant with respect to the entire subject matter hereof, and any and all prior  
4 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
5 merged herein and therein.

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

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

14          11.4. No supplementation, modification, waiver, or termination of this Consent  
15 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

16          11.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or  
17 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall  
18 such waiver constitute a continuing waiver.

19           **12. RETENTION OF JURISDICTION**

20          12.1. This Court shall retain jurisdiction of this matter to implement or modify the  
21 Consent Judgment.

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

23          13.1. Each signatory to this Consent Judgment certifies that he or she is fully authorized  
24 by the Party he or she represents to stipulate to this Consent Judgment and to enter into and  
25 execute the Consent Judgment on behalf of the Party represented and to legally bind that Party.

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

27          14.1. Nothing in this Consent Judgment shall preclude CEH from resolving any claim  
28 against another entity on terms that are different from those contained in this Consent Judgment.

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**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: 15 July, 2014 **CENTER FOR ENVIRONMENTAL HEALTH**

  
\_\_\_\_\_

CHARLIE PIZARRO  
Printed Name

ASSOCIATE DIRECTOR  
Title

Dated: July 10, 2014 **RADIAL ENGINEERING LTD.**

  
\_\_\_\_\_

Peter Janis  
Printed Name

President  
Title

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

Dated: \_\_\_\_\_, 2014

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