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10 CENTER FOR ENVIRONMENTAL HEALTH

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SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
FOR THE COUNTY OF ALAMEDA

CENTER FOR ENVIRONMENTAL  
HEALTH, a non-profit corporation,

Plaintiff,

v.

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

Case No. RG-13707315

**[PROPOSED] CONSENT  
JUDGMENT RE: SINGER  
SAFETY COMPANY**

**1. INTRODUCTION**

1.1. This Consent Judgment is entered into by Plaintiff Center for Environmental Health, a non-profit corporation (“CEH”), and Defendant Industrial Noise Control, Inc. (“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 Superior Court Case No. RG-13707315 (the “Action”). CEH and Defendant are referred to collectively as the “Parties.”

1.2. On August 8, 2014, CEH served a “Notice of Violation” (the “Notice”) relating to the California Safe Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”) on

1 Defendant, the California Attorney General, the District Attorneys of every County in the State of  
2 California, and the City Attorneys for every City in State of California with a population greater  
3 than 750,000. The Notice alleges violations of Proposition 65 with respect to the presence of tris  
4 (1,3-dichloro-2-propyl) phosphate (“TDCPP”) in acoustic and soundproofing foam manufactured,  
5 distributed, and/or sold by Defendant.

6 1.3. Defendant is a corporation that employs ten (10) or more persons and that  
7 manufactures, distributes, and/or sells Covered Products (as defined herein) in the State of  
8 California. Defendant asserts that it no longer plans to distribute, sell, or offer for sale such  
9 Covered Products in California unless or until Proposition 65 is amended with respect to TDCPP  
10 in acoustic and soundproofing foam.

11 1.4. For purposes of this Consent Judgment only, the Parties stipulate that: (i) this  
12 Court has jurisdiction over the allegations of violations contained in the Notice and Complaint  
13 and personal jurisdiction over Defendant as to the acts alleged in the Complaint; (ii) venue is  
14 proper in the County of Alameda; and (iii) this Court has jurisdiction to enter this Consent  
15 Judgment as a full and final resolution of all claims which were or could have been raised in the  
16 Complaint based on the facts alleged in the Notice and Complaint with respect to Covered  
17 Products manufactured, distributed, and/or sold by Defendant.

18 1.5. The Parties enter into this Consent Judgment as a full and final settlement of all  
19 claims which were or could have been raised in the Complaint arising out of the facts or conduct  
20 related to Defendant alleged therein. By execution of this Consent Judgment and agreeing to  
21 comply with its terms, the Parties do not admit any fact, conclusion of law, or violation of law,  
22 nor shall compliance with the Consent Judgment constitute or be construed as an admission by  
23 the Parties of any fact, conclusion of law, or violation of law. Defendant denies the material,  
24 factual, and legal allegations in the Notice and Complaint and expressly denies any wrongdoing  
25 whatsoever. Except as specifically provided herein, nothing in this Consent Judgment shall  
26 prejudice, waive, or impair any right, remedy, argument, or defense either Party may have in this  
27 or any other pending or future legal proceedings. This Consent Judgment is the product of  
28

negotiation and compromise and is accepted by the Parties solely for purposes of settling, compromising, and resolving issues disputed in this Action.

## **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 (a) any chemical that has been rated as a Benchmark 4 chemical pursuant to Clean Production Action’s GreenScreen for Safer Chemicals (<http://www.greenscreenchemicals.org/>); or (b) ammonium polyphosphate.

2.2. “Covered Products” means acoustic and/or soundproofing foam manufactured, distributed, and/or sold by Defendant in California which contain any Chemical Flame Retardant.

2.3. “Direct Customers” means those customers or entities who order directly from Singer Safety with delivery directly to said customer or entity.

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

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

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

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

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

## **3. INJUNCTIVE RELIEF**

3.1. Defendant shall comply with the following requirements to satisfy Proposition 65 with respect to TDCPP in the Covered Products:

3.1.1. **Reformulation of Covered Products.** As of the Effective Date, Defendant shall not distribute, sell, or offer for sale in California any Covered Product that has been Treated with any Chemical Flame Retardant and which has a Manufacture Date that is on or

1 later than the Effective Date. The Parties agree that Defendant may satisfy this Section 3.1.1 by  
2 not distributing, selling, or offering for sale in California any Covered Products after the Effective  
3 Date.

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

18 3.1.1.2. To ensure compliance with the reformulation provisions of  
19 Section 3.1.1, should Defendant not seek to distribute, sell, or offer for sale in California any  
20 Covered Product after the Effective Date, Defendant shall notify by certified mail, registered  
21 mail, or any other mailing which demonstrates proof of receipt and delivery and the date and  
22 address of delivery all of its Direct Customers of Covered Products that such Covered Products  
23 may not be sold or offered for sale in California.

24 3.1.2. **Interim Compliance – All Covered Products.** Any Covered Product  
25 with a Manufacture Date that is earlier than the Effective Date that has not yet been sold or  
26 distributed by Defendant, that Defendant knows or has reason to know has been Treated with any  
27 Listed Chemical Flame Retardant, and that is distributed, sold, or offered for sale by Defendant in  
28 California after the Effective Date shall be accompanied by a Clear and Reasonable Warning that

1 complies with Section 3.1.4. The Parties agree that Defendant may satisfy this Section 3.1.2 by  
2 not distributing, selling, or offering for sale in California any Covered Product containing any  
3 Listed Chemical Flame Retardant after the Effective Date.

4           **3.1.3. Warnings for Products in the Stream of Commerce.** In an effort to  
5 ensure that consumers receive clear and reasonable warnings in compliance with Proposition 65  
6 for Covered Products that have not been reformulated pursuant to Section 3.1.1 or labeled in  
7 accordance with Section 3.1.2, within 30 days following the Effective Date, Defendant shall  
8 provide warning materials by certified mail, registered mail, or any other mailing which  
9 demonstrates proof of receipt and delivery and the date and address of delivery to each of its  
10 Direct Customers that may sell into California to whom Defendant reasonably believes it sold  
11 Covered Products that contained or may have contained any Listed Chemical Flame Retardant on  
12 or after October 31, 2011. Such warning materials shall include a reasonably sufficient number  
13 of stickers and/or labels in order to permit the retailer or distributor to place a warning sticker or  
14 label on each Covered Product such customer has purchased from Defendant. The stickers and/or  
15 labels shall contain the warning language set forth in Section 3.1.4. The warning materials shall  
16 also include a letter of instruction for the placement of the stickers and/or labels, and a Notice and  
17 Acknowledgment postcard.

18           **3.1.4. Proposition 65 Warnings.** A Clear and Reasonable Warning under this  
19 Consent Judgment shall state:

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

23 A Clear and Reasonable Warning shall not be preceded by, surrounded by, or include any  
24 additional words or phrases that contradict, obfuscate, or otherwise undermine the warning. The  
25 warning statement shall be prominently displayed on the Covered Product or the packaging of the  
26 Covered Product with such conspicuousness, as compared with other words, statements, or  
27 designs as to render it likely to be read and understood by an ordinary individual prior to sale.  
28 For internet, catalog, or any other sale where the consumer is not physically present and cannot

1 see a warning displayed on the Covered Product or the packaging of the Covered Product prior to  
2 purchase or payment, the warning statement shall be displayed in such a manner that it is likely to  
3 be read and understood prior to the authorization of or actual payment.

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

5 4.1. Defendant shall pay to CEH the total sum of twenty thousand dollars (\$20,000).  
6 This total shall be paid in the manner set forth below, with each separate check delivered to Mark  
7 Todzo at Lexington Law Group at the address set forth in Section 8, and shall be made payable  
8 and allocated as follows:

9 4.1.1. Defendant shall pay a total of \$2,200 as a penalty pursuant to Cal. Health  
10 & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Cal.  
11 Health & Safety Code § 25249.12. The penalty check shall be made payable to the Center for  
12 Environmental Health and shall be delivered to the Lexington Law Group within 10 days  
13 following the Effective Date.

14 4.1.2. Defendant shall pay a total of \$3,000 as a payment in lieu of civil penalty  
15 pursuant to Cal. Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such  
16 funds to continue its work of educating and protecting the public from exposures to toxic  
17 chemicals, including chemical flame retardants. CEH may also use a portion of such funds to  
18 monitor compliance with this Consent Judgment and to purchase and test Defendant's products to  
19 confirm compliance. In addition, as part of its Community Environmental Action and Justice  
20 Fund, CEH will use four percent (4%) of such funds to award grants to grassroots environmental  
21 justice groups working to educate and protect the public from exposures to toxic chemicals. The  
22 method of selection of such groups can be found at the CEH website at [www.ceh.org/justicefund](http://www.ceh.org/justicefund).  
23 The payment in lieu of penalty check shall be made payable to the Center for Environmental  
24 Health and shall be delivered to the Lexington Law Group within 10 days following the Effective  
25 Date.

26 4.1.3. Defendant shall pay a total of \$14,800 to reimburse CEH for its reasonable  
27 attorneys' fees and costs. This payment shall be made payable to the Lexington Law Group in  
28 two (2) installments of \$7,400 each. The first installment of \$7,400 shall be delivered to the

1 Lexington Law Group on or before October 15, 2015. The second installment of \$7,400 shall be  
2 delivered to Lexington Law Group on or before December 31, 2015.

3 **5. ENFORCEMENT OF CONSENT JUDGMENT**

4 5.1. CEH may, by motion or application for an order to show cause before the Superior  
5 Court of Alameda County, enforce the terms and conditions contained in this Consent Judgment.  
6 Prior to bringing any motion or application to enforce the requirements of Section 3 above, CEH  
7 shall provide Defendant with a Notice of Violation and a copy of any test results which  
8 purportedly support CEH's Notice of Violation. The Parties shall then meet and confer regarding  
9 the basis for CEH's anticipated motion or application in an attempt to resolve it informally,  
10 including providing Defendant a reasonable opportunity of at least thirty (30) days to cure any  
11 alleged violation. Should such attempts at informal resolution fail, CEH may file its enforcement  
12 motion or application. The prevailing party on any motion to enforce this Consent Judgment  
13 shall be entitled to its reasonable attorney's fees and costs incurred as a result of such motion or  
14 application. This Consent Judgment may only be enforced by the Parties.

15 **6. MODIFICATION OF CONSENT JUDGMENT**

16 6.1. This Consent Judgment may only be modified by written agreement of CEH and  
17 Defendant, or upon motion of CEH or Defendant as provided by law.

18 **7. CLAIMS COVERED AND RELEASE**

19 7.1. This Consent Judgment is a full, final, and binding resolution between CEH acting  
20 in the public interest and Defendant and Defendant's parents, officers, directors, shareholders,  
21 divisions, subdivisions, subsidiaries, and their respective successors and assigns ("Defendant  
22 Releasees"), and all entities to whom they distribute or sell or have distributed or sold Covered  
23 Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees,  
24 cooperative members, and licensees ("Downstream Defendant Releasees"), of all claims alleged  
25 in the Complaint in this Action arising from any violation of Proposition 65 that have been or  
26 could have been asserted in the public interest against Defendant and Downstream Defendant  
27 Releasees, regarding the failure to warn about exposure to TDCPP in the Covered Products  
28 manufactured, distributed, or sold by Defendant prior to the Effective Date.

1           7.2.    CEH, for itself releases, waives, and forever discharges any and all claims alleged  
2 in the Complaint against Defendant and Downstream Defendant Releasees arising from any  
3 violation of Proposition 65 that have been or could have been asserted regarding the failure to  
4 warn about exposure to TDCPP in connection with Covered Products manufactured, distributed,  
5 or sold by Defendant prior to the Effective Date.

6           7.3.    Compliance with the terms of this Consent Judgment by Defendant and the  
7 Downstream Defendant Releasees shall constitute compliance with Proposition 65 by Defendant  
8 and Downstream Defendant Releasees with respect to any alleged failure to warn about any  
9 Listed Chemical Flame Retardants in Covered Products manufactured, distributed, or sold by  
10 Defendant after the Effective Date.

## 11           **8. PROVISION OF NOTICE**

12           8.1.    When any Party is entitled to receive any notice under this Consent Judgment, the  
13 notice shall be sent by first class and electronic mail as follows:

14                   8.1.1. **Notices to Defendant.** The persons for Defendant to receive notices  
15 pursuant to this Consent Judgment shall be:

16                               Tracy E. Stevenson  
17                               Robbins, Salomon & Patt, Ltd.  
18                               180 N. LaSalle Street, Suite 3300  
19                               Chicago, IL 60601  
20                               tstevenson@rsplaw.com

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

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.



1           **9. COURT APPROVAL**

2           9.1. This Consent Judgment shall become effective on the Effective Date, provided  
3 however, that CEH shall prepare and file a Motion for Approval of this Consent Judgment and  
4 Defendant shall support approval of such Motion.

5           9.2. If this Consent Judgment is not entered by the Court, it shall be of no force or  
6 effect and shall not be introduced into evidence or otherwise used in any proceeding for any  
7 purpose.

8           **10. GOVERNING LAW AND CONSTRUCTION**

9           10.1. The terms and obligations arising from this Consent Judgment shall be construed  
10 and enforced in accordance with the laws of the State of California.

11           **11. ENTIRE AGREEMENT**

12           11.1. This Consent Judgment contains the sole and entire agreement and understanding  
13 of CEH and Defendant with respect to the entire subject matter hereof, and any and all prior  
14 discussions, negotiations, commitments, or understandings related thereto, if any, are hereby  
15 merged herein.

16           11.2. There are no warranties, representations, or other agreements between CEH and  
17 Defendant except as expressly set forth herein. No representations, oral or otherwise, express or  
18 implied, other than those specifically referred to in this Consent Judgment have been made by any  
19 Party hereto.

20           11.3. No other agreements not specifically contained or referenced herein, oral or  
21 otherwise, shall be deemed to exist or to bind any of the Parties hereto. Any agreements  
22 specifically contained or referenced herein, oral or otherwise, shall be deemed to exist or to bind  
23 any of the Parties hereto only to the extent that they are expressly incorporated herein.

24           11.4. No supplementation, modification, waiver, or termination of this Consent  
25 Judgment shall be binding unless executed in writing by the Party to be bound thereby.

26           11.5. No waiver of any of the provisions of this Consent Judgment shall be deemed or  
27 shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall  
28 such waiver constitute a continuing waiver.

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**12. RETENTION OF JURISDICTION**

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

**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: July 1, 2015      **CENTER FOR ENVIRONMENTAL HEALTH**

  
\_\_\_\_\_

Carme Pizarro  
\_\_\_\_\_

Printed Name

Associate Director  
\_\_\_\_\_

Title

1  
2 Dated: JUNE 8, 2015

SINGER SAFETY COMPANY

3 *Anna Marie Johnson*4 ANNA MARIE JOHNSON

5 Printed Name

6 PRESIDENT

7 Title

8  
9 **IT IS SO ORDERED, ADJUDGED,  
AND DECREED:**10  
11 Dated: \_\_\_\_\_, 201512 Judge of the Superior Court of the State of  
13 California, County of Alameda