

**SETTLEMENT AGREEMENT & RELEASE –**  
**GIGA IMPORTS INC. & GIGA TENTS INC.**

This Settlement Agreement and Release (the “Agreement”) is between Center for Environmental Health (“CEH”), and Giga Imports Inc. and Giga Tents Inc. Giga Imports Inc. and Giga Tents Inc. are collectively referred to hereinafter as “Giga.” CEH and Giga may collectively be referred to hereinafter as the “Parties.”

**1. INTRODUCTION**

**1.1.** On November 21, 2014, CEH sent a “Notice of Violation of Safe Drinking Water and Toxic Enforcement Act of 1986 (Proposition 65)” (the “Notice”), to Giga, the California Attorney General, the District Attorneys of every county in the State of California, and the City Attorneys for every city in State of California with a population greater than 750,000. The Notice alleges violations of Proposition 65 with respect to the presence of tris (1,3-dichloro-2-propyl) phosphate (“TDCPP”) in children’s play tents. Giga distributed and/or sold such products via retailers and/or online retailers to consumers in California.

**1.2.** The Notice alleges that Giga’s products expose people to TDCPP, a chemical known to the State of California to cause cancer, specifically those persons who inhale TDCPP released from these products, or who touch or ingest dust contaminated by TDCPP from the products. The Notice alleges that such conduct violates Health & Safety Code § 25249.6, the warning provision of Proposition 65, as Giga allegedly causes these exposures without first providing clear and reasonable warning to such persons regarding the carcinogenic hazards associated with TDCPP.

**1.3.** Giga asserts that it has fewer than 10 employees and thus is exempt from Proposition 65. However, upon receipt of the Notice, Giga promptly contacted CEH in an effort

to resolve CEH's claims regarding products distributed and/or sold by Giga, in order to resolve any Proposition 65 liability its customers may have as a result of selling products distributed and/or sold by Giga.

**1.4.** Giga represents that the entirety of its business in California with respect to children's play tents is presently done on a drop-ship basis, with no such products being held in the inventory of third-party entities, such as retailers or distributors.

**1.5.** The Parties enter into this Agreement for the purpose of avoiding prolonged and costly litigation regarding children's play tents distributed and/or sold by Giga. By executing this Agreement, the Parties do not admit any facts or conclusions of law. It is the Parties' intent that nothing in this Agreement shall be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law, nor shall compliance with the Agreement constitute or be construed as an admission by the Parties of any fact, conclusion of law, issue of law, or violation of law. Nothing in this Agreement shall prejudice, waive or impair any right, remedy, argument, or defense the Parties may have in this or any other or future legal proceedings.

## **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 any chemical that has been rated as a Benchmark 4 chemical pursuant to Clean Production Action's GreenScreen (<http://www.greenscreenchemicals.org/>).

**2.2.** "Covered Products" means children's play tents manufactured, distributed, sold, and/or offered for sale by Giga in California.

**2.3.** "Effective Date" means the date on which the Parties execute this Agreement.

**2.4.** “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”).

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

**2.6.** “Treated” means the addition or application of any Chemical Flame Retardant to any fabric used in any Covered Product.

**2.7.** “Untreated Fabric” means the fabric used to make the Covered Product that has not been Treated with any Chemical Flame Retardant.

### **3. INJUNCTIVE RELIEF**

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

**3.1.1. Listed Chemical Flame Retardants – Covered Products.** As of the Effective Date, Giga shall not distribute, sell, or offer for sale in the State of California any Covered Product that has been both (a) Treated with any Listed Chemical Flame Retardant, and (b) which has a Manufacture Date that is on or later than the Effective Date. For purposes of clarity, this restriction does not apply to Covered Product which has a Manufacture Date that is prior to the Effective Date.

**3.1.1.1. Specification To and Certification From Suppliers.** To ensure compliance with the reformulation provisions of Section 3.1.1, following the Effective Date, Giga shall directly or through its supply chain issue specifications to its suppliers of Covered Products and/or fabric used in any Covered Product requiring that such products and/or fabric

have not been any Treated with any Listed Chemical Flame Retardant in accordance with the requirements of Section 3.1.1. Giga shall obtain and maintain written certification(s) from its suppliers confirming that all such Covered Products and/or fabric received by Giga for distribution in California have not been Treated with any Listed Chemical Flame Retardant. CEH agrees and acknowledges that Giga shall not be deemed in violation of the requirements of Section 3.1.1 for any Covered Product to the extent: (a) it has obtained a written certification from its vendor that supplied a Covered Product that such Covered Product is made with only Untreated Fabric, and/or, if such certification has previously been demonstrated to be invalid, (b) it has obtained a test result from an independent third party certified laboratory reporting that the Covered Product has been made with no Listed Chemical Flame Retardants. Giga shall maintain such certifications or laboratory reports for a period of at least two (2) years from the Effective Date.

**3.1.2. Interim Compliance – Covered Products.** Any Covered Products in which the fabric has been Treated with any Listed Chemical Flame Retardant and which is distributed, sold, or offered for sale by Giga in California after the Effective Date shall be accompanied by a Clear and Reasonable Warning that complies with Section 3.1.3. Notwithstanding Section 3.2 below, Giga shall be allowed to distribute, sell, or offer for sale Covered Products in California that have been Treated with a Listed Chemical Flame Retardant and that have a Manufacture Date that is before the Effective Date, including such Covered Products in Giga’s inventory as of the Effective Date, so long as Giga provides a Clear and Reasonable Warning that complies with Section 3.1.3.

**3.1.3. Proposition 65 Warnings.** A Clear and Reasonable Warning under this Agreement shall state:

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

A Clear and Reasonable Warning shall not be preceded by, surrounded by, or include any additional words or phrases that contradict, obfuscate, or otherwise undermine the warning. The warning statement shall be prominently displayed on the Covered Product or the packaging of the Covered Product with such conspicuousness, as compared with other words, statements, or designs, as to render it likely to be read and understood by an ordinary individual prior to sale. For internet, catalog, or any other sale where the consumer is not physically present and cannot see a warning displayed on the Covered Product or the packaging of the Covered Product prior to purchase or payment, the warning statement shall be displayed in such a manner that it is likely to be read and understood prior to the authorization of or actual payment. For such sales, Giga shall secure compliance with this provision by, on or before the Effective Date, notifying any internet or catalog sellers for which it drop-ships Covered Products of the need to provide a Clear and Reasonable Warning to California residents prior to purchase of Covered Products in which the fabric has been Treated with any Listed Chemical Flame Retardant. Giga shall be deemed to comply if such notification is given to internet or catalog sellers, even if such internet or catalog sellers do not subsequently provide warning prior to purchase or payment.

**3.2. Optional Additional Reformulation – Use of Untreated Fabric.** In order for Giga to be eligible for a waiver of the additional penalty/payment in lieu of penalty payments set forth in Section 4.1.5 below, Giga shall undertake the additional actions to reduce or eliminate the use of Chemical Flame Retardants set forth herein. As of 180 days following the Effective Date, Giga shall not manufacture or distribute, sell, or offer for sale in California any Covered Product that has been Treated with any Chemical Flame Retardant. In order to avoid the

additional payments, Giga must provide written certification to CEH of its use of only Untreated Fabric within 210 days following the Effective Date.

**3.2.1. Specification To and Certification From Suppliers.** To ensure compliance with the provisions of Section 3.2, to the extent that Giga opts for additional reformulation, Giga shall directly or through its supply chain issue specifications to its suppliers of Covered Products and/or fabric used in any Covered Product requiring that such products and/or fabric shall contain no Chemical Flame Retardants. Giga shall not be deemed in violation of the requirements of Section 3.2 for any Covered Product to the extent: (a) it has obtained a written certification from its vendor that supplied a Covered Product that such product is made with only Untreated Fabric, and/or (b) has obtained a test result from a certified laboratory reporting that the Covered Product's fabric contains no Chemical Flame Retardants. Giga shall obtain and maintain written certification(s) from its suppliers confirming that all such Covered Products and/or fabric received by Giga for distribution in California is Untreated Fabric for a period of at least two (2) years from the Effective Date.

#### **4. SETTLEMENT PAYMENTS**

**4.1.** In consideration of the mutual covenants and releases provided in this Agreement, Giga shall pay to CEH the total sum of \$20,000. This total shall be paid in the manner set forth below, with each separate check delivered to Mark Todzo at Lexington Law Group at the address set forth in Section 10, and shall be made payable and allocated as follows:

**4.1.1. Civil Penalty.** Giga shall pay a total of \$2,200 as a penalty pursuant to Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Health & Safety Code § 25249.12. The penalty check shall be made payable to the Center for Environmental Health and shall be delivered to the Lexington Law Group on or before August

25, 2015.

**4.1.2. Monetary Payment in Lieu of Civil Penalty.** Giga shall pay a total of \$3,000 as payment to CEH in lieu of civil penalty pursuant to Health & Safety Code § 25249.7(b), and California Code of Regulations, Title 11, § 3203(b). CEH will use such funds to continue its work educating and protecting the public from exposures to toxic chemicals, including chemical flame retardants. CEH may also use a portion of such funds to monitor compliance with this Agreement and to purchase and test Giga's products to confirm compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH will use four percent (4%) of such funds to award grants to grassroots environmental justice groups working to educate and protect the public from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH website at [www.ceh.org/justicefund](http://www.ceh.org/justicefund). The payment in lieu of penalty check shall be made payable to the Center for Environmental Health and shall be delivered to the Lexington Law Group on or before September 15, 2015.

**4.1.3. Attorneys' Fees and Costs.** Giga shall pay a total of \$14,800 to reimburse CEH for its reasonable attorneys' fees and costs. This payment shall be made payable to the Lexington Law Group in three (3) installments. The first installment of \$3,800 shall be delivered to the Lexington Law Group on or before August 25, 2015. The second installment of \$4,000 shall be delivered to Lexington Law Group on or before September 15, 2015. The third installment of \$7,000 shall be delivered to Lexington Law Group on or before November 15, 2015.

**4.1.4.** In the event that Giga elects not to certify their compliance with Section 3.2 in accordance with that Section, within 210 days following the Effective Date, Giga must

make an additional payment of \$7,700, which shall be paid in two separate checks, each payable to the Center for Environmental Health and delivered to Mark Todzo at Lexington Law Group at the address set forth in Section 10, to be allocated as follows:

**4.1.4.1.** \$3,100 shall constitute a penalty pursuant to Cal. Health & Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health & Safety Code § 25249.12.

**4.1.4.2.** \$4,600 shall constitute a payment in lieu of civil penalty pursuant to Cal. Health & Safety Code § 25249.7(b) and 11 C.C.R. § 3202(b). CEH will use such funds to continue its work of educating and protecting the public from exposures to toxic chemicals, including chemical flame retardants. CEH may also use a portion of such funds to monitor compliance with this Agreement and to purchase and test Giga's products to confirm compliance. In addition, as part of its Community Environmental Action and Justice Fund, CEH will use four percent (4%) of such funds to award grants to grassroots environmental justice groups working to educate and protect the public from exposures to toxic chemicals. The method of selection of such groups can be found at the CEH website at [www.ceh.org/justicefund](http://www.ceh.org/justicefund).

## **5. ENFORCEMENT OF SETTLEMENT AGREEMENT**

**5.1.** The Parties agree that either Party may enforce any term or condition contained in this Agreement by motion or application for an order to show cause in the Superior Court of California in Alameda County in the pending case captioned *Center for Environmental Health v. Pacific Play Tents, Inc., et al.*, RG-15753975 (Filed January 8, 2015), or as a new action in that Court. For purposes of this Agreement, notwithstanding Section 1.3 above, the Parties agree that the Superior Court of California in Alameda County has subject matter jurisdiction over any

disputes arising from this Agreement and personal jurisdiction over each of the Parties, and that venue is proper in the County of Alameda. Should a Party to this Agreement prevail on any motion, application, or action to enforce the terms of this Agreement, it shall be entitled to reasonable attorneys' fees and costs associated with such enforcement.

**5.2. Enforcement Procedures.** Prior to bringing any motion, application, or action to enforce the terms of this Agreement, a Party seeking to enforce shall provide the violating Party thirty (30) days advance written notice of the alleged violation. For alleged violations of the reformulation provisions of Section 3 above, CEH shall provide Giga with a copy of any test results that purportedly support CEH's allegations concurrently with its advance written notice. The Parties shall meet and confer during such thirty (30) day period regarding the basis for the anticipated motion, application, or action in an attempt to resolve the disputed issues informally. Should such attempts at informal resolution fail, the Party alleging violations may file its enforcement motion, application, or action. This Agreement may only be enforced by the Parties.

## **6. MODIFICATION OF SETTLEMENT AGREEMENT**

**6.1.** This Agreement may be modified only by written agreement of the Parties, or upon motion of CEH or Giga as provided by law. In the event a third party acting on behalf of the public interest seeks to assert violations against Giga or any of the Downstream Releasees regarding the failure to warn about exposure to TDCPP, TCEP, or TDBPP in connection with Covered Products manufactured, distributed, or sold by Giga prior to the Effective Date, Giga may request that this Agreement be converted to a Consent Judgment, if possible.

## 7. CLAIMS COVERED AND RELEASE

7.1. This Agreement is a full, final, and binding resolution between CEH acting in the public interest and its parents, shareholders, officers, managers, directors, employees, divisions, subdivisions, subsidiaries, and their successors or assigns, and Giga and Giga's parents, shareholders, officers, managers, directors, employees, divisions, subdivisions, subsidiaries, and their successors or assigns ("Giga Releasees"), and all entities to whom, or through whom, they distribute or sell Covered Products including, but not limited to, distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees and including, expressly, but not limited to Wal-Mart Stores Inc., and Wal-Mart.Com USA, LLC, and each of their respective affiliates, parents, and subsidiaries ("Downstream Releasees"), of all claims, causes of actions, violations, and liabilities arising from any violation of Proposition 65 that have been or could have been asserted in the public interest against Giga Releasees and Downstream Releasees regarding the failure to warn about exposure to TDCPP in the Covered Products manufactured, distributed, or sold by Giga prior to the Effective Date.

7.2. Except as otherwise provided herein, CEH hereby releases and discharges Giga with respect to any violation of Proposition 65 (or any other claim related to failure to warn about exposures to TDCPP, TCEP, or TDBPP in the Covered Products) that was or could have been asserted in the public interest against Giga Releasees and Downstream Releasees regarding the failure to warn about exposure to TDCPP, TCEP, or TDBPP in connection with Covered Products manufactured, distributed, or sold by Giga prior to the Effective Date.

7.3. Additionally, CEH on its own behalf and not as part of acting in the public interest, acknowledges it is familiar with **Section 1542 of Civil Code, which provides as follows:**

*A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.*

CEH, on its own individual behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or assignees, expressly waives and relinquishes any and all rights and benefits which it may have under, or which may be conferred on it by the provisions of Civil Code section 1542 as well as under any other state or federal statute or common law principle of similar effect, to the fullest extent that it may lawfully waive such rights or benefits pertaining to the released matters.

## **8. COMPLIANCE WITH LAW**

**8.1.** Compliance with the terms of this Agreement by Giga and Downstream Releasees shall constitute compliance with Proposition 65 by Giga and Downstream Releasees with respect to any alleged failure to warn about TDCPP in Covered Products manufactured, distributed, or sold by Giga after the Effective Date.

**8.2.** In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by reason of law generally, or if any of the provisions of this Agreement are rendered inapplicable or no longer required as a result of any such repeal or preemption or rendered inapplicable by reason of law generally as to the Covered Products, including, without limitation, the removal of any of the Listed Chemical Flame Retardants from OEHHA's list of Proposition 65 chemicals, then Giga shall notify CEH and its counsel and shall have no further obligations regarding the Listed Chemical Flame Retardant(s) pursuant to this Agreement with respect to, and to the extent that, the Covered Products are so affected.

## **9. SPECIFIC PERFORMANCE**

**9.1.** The Parties expressly recognize that Giga's obligations under this Agreement are unique. In the event that Giga is found to be in breach of this Agreement for failure to comply with the provisions of Section 3 hereto, the Parties agree that it would be extremely impracticable to measure any resulting damages and that such breach would cause irreparable damage. Accordingly, CEH, in addition to any other available rights or remedies, may sue in equity for specific performance, and Giga expressly waives the defense that a remedy in damages will be adequate.

## **10. PROVISION OF NOTICE**

**10.1.** When any Party is entitled to receive any notice under this Agreement, the notice shall be sent by first class and electronic mail as follows:

**10.1.1. Notices to Giga.** The person(s) for Giga to receive notices pursuant to this Agreement shall be:

Steven Stern  
STERN & SCHURIN LLP  
220 E. 42nd Street, Suite 3304  
New York, NY 10017  
[SStern@SternSchurin.com](mailto:SStern@SternSchurin.com)

**10.1.2. Notices to CEH.** The person(s) for CEH to receive notices pursuant to this Agreement shall be:

Mark N. Todzo  
Lexington Law Group  
503 Divisadero Street  
San Francisco, CA 94117  
mtodzo@lexlawgroup.com

**10.2.** Any Party may modify the person and address to whom the notice is to be sent by sending the other Party notice by first class and electronic mail.

## **11. GOVERNING LAW AND CONSTRUCTION**

**11.1.** The terms of this Agreement shall be construed and enforced in accordance with the laws of the State of California.

## **12. ENTIRE AGREEMENT**

**12.1.** This Agreement contains the sole and entire agreement and understanding of the Parties with respect to the entire subject matter hereof, and any and all prior discussions, negotiations, commitments, or understandings related thereto, if any, are hereby merged herein and therein.

**12.2.** There are no warranties, representations, or other agreements between the Parties except as expressly set forth herein. No representations, oral or otherwise, express or implied, other than those specifically referred to in this Agreement have been made by any Party hereto.

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

**12.4.** No supplementation, modification, waiver, or termination of this Agreement shall be binding unless executed in writing by the Party to be bound thereby.

**12.5.** No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any of the other provisions hereof whether or not similar, nor shall such waiver constitute a continuing waiver.

**13. AUTHORIZATION**

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

**14. NO EFFECT ON OTHER SETTLEMENTS**

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

**15. EXECUTION IN COUNTERPARTS**

15.1. This Agreement may be executed in counterparts by means of electronic mail or facsimile, which taken together shall be deemed to constitute one document, provided each Party receives a signed copy containing the other Party's signature.

**AGREED TO:**

**CENTER FOR ENVIRONMENTAL HEALTH**



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Charlie Pizarro  
Associate Director

Dated: 8/21/15

**GIGA IMPORTS INC.**

\_\_\_\_\_

Philip Hoffman  
President

Dated: \_\_\_\_\_

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

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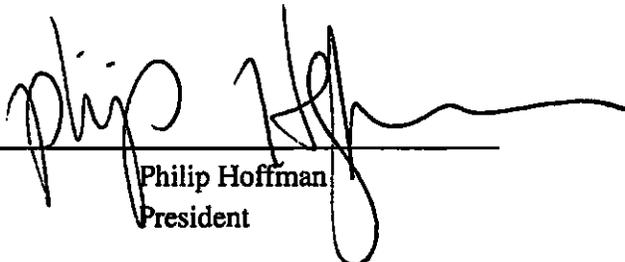
**AGREED TO:**

**CENTER FOR ENVIRONMENTAL HEALTH**

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Charlie Pizarro  
Associate Director

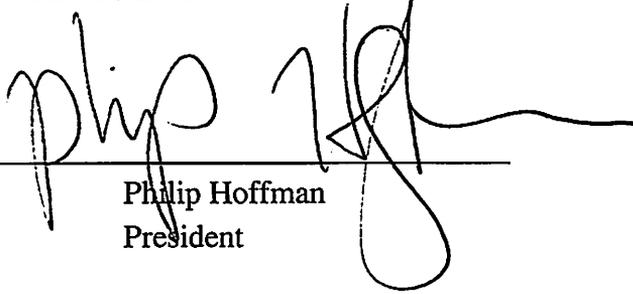
Dated: \_\_\_\_\_

**GIGA IMPORTS INC.**

  
\_\_\_\_\_  
Philip Hoffman  
President

Dated: 8/26/15

**GIGA TENTS INC.**

  
\_\_\_\_\_  
Philip Hoffman  
President

Dated: 8/26/2015