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8 SUPERIOR COURT OF THE STATE OF CALIFORNIA  
9 COUNTY OF ALAMEDA

10 ANTHONY FERRIERO,

11 Plaintiff,

12 vs.

13 TRICAM INDUSTRIES, INC.,

14 Defendant.

Case No.: RG15789604

**[PROPOSED] CONSENT JUDGMENT**

Date:  
Time:  
Dept.:  
Judge:  
Reservation #:

1           **1. Introduction**

2           1.1     On May 21, 2015, Anthony Ferreiro (“Ferreiro”) served Tricam Industries, Inc.  
3 (“Tricam”), Wal-Mart Stores, Inc. (“Wal-Mart”), and various public enforcement agencies with a  
4 document entitled “Notice of Violation of California Health & Safety Code § 25249.6, *et seq.*”  
5 (the “Notice”). The Notice provided Tricam and such others, including public enforcers, with  
6 notice that alleged that Tricam was in purported violation of California Health & Safety Code §  
7 25249.6 (“Proposition 65”) for failing to warn consumers and customers that Weatherguard  
8 Extreme Duty Tarp, UPC No. 7 22571009526 (the “Product”), potentially exposed users in  
9 California to the chemical Di(2-ethylhexyl) phthalate (DEHP). No public enforcer has diligently  
10 prosecuted the allegations set forth in the Notice.

11           1.2     On October 15, 2015, Ferreiro filed a Complaint for Civil Penalties and Injunctive  
12 Relief (“Complaint”) in the Alameda County court (the “Court”), Case No. RG15789604, against  
13 Tricam and Wal-Mart, alleging violations of Proposition 65 with respect to the Product (the  
14 “Action”).

15           1.3     Tricam is a corporation that employs more than ten persons under California  
16 Health and Safety Code §25249.6 and allegedly offered the Product for sale within the State of  
17 California.

18           1.4     Ferreiro’s Complaint alleges, among other things, that Tricam sold the Product in  
19 California and/or to California citizens, that the Product contains DEHP, and that the resulting  
20 exposure violated provisions of Proposition 65, by knowingly and intentionally exposing persons  
21 to a chemical known to the State of California to cause cancer and reproductive toxicity, without  
22 first providing a clear and reasonable warning to such individuals.

23           1.5.    On February 5, 2016, defendant Wal-Mart was dismissed from the litigation.

24           1.6.    For purposes of this Consent Judgment only, the parties stipulate that this Court  
25 has jurisdiction over the allegations of violations contained in the Complaint and personal  
26 jurisdiction over Tricam as to the acts alleged in the Complaint, that venue is proper in the  
27 County of Alameda, and that this Court has jurisdiction to enter this Consent Judgment as a  
28 resolution of the allegations contained in the Complaint.

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17. The parties enter into this Consent Judgment pursuant to a full settlement and release of disputed claims between the parties as alleged in the Complaint for the purpose of avoiding prolonged litigation. By execution of this Consent Judgment, Tricam does not admit any violation of Proposition 65 and specifically denies that it has committed any such violation. Nothing in this Consent Judgment shall be construed as an admission by Tricam of any fact, issue of law, or violation of law, nor shall compliance with the Consent Judgment constitute or be construed as an admission by Tricam of any fact, issue of law, or violation of law. Nothing in this Consent Judgment shall prejudice, waive, or impair any right, remedy or defense that Tricam may have in any other future legal proceeding. However, this paragraph shall not diminish or otherwise affect the obligations, responsibilities and duties of Tricam under this Consent Judgment.

1.8 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date this Consent Judgment is entered by the Court.

**2. Injunctive Relief**

By this Consent Judgment the parties agree that Tricam may choose to comply with the injunctive relief provisions in 2.1 to 2.2 below regarding reformulated products OR provide a Proposition 65 warning with respect to the Products in 2.3 to 2.4 below.

2.1 Commencing on the Effective Date, and continuing thereafter, Tricam shall only ship, sell, or offer for sale in California, reformulated Products pursuant to Section 2.2 or Products that are labeled with a clear and reasonable warning pursuant to Section 2.3. For purposes of this Settlement Agreement, "Reformulated Products" are Products that meet the standard set forth in Section 2.2 below.

2.2 "Reformulated Products" shall mean Products that contains less than or equal to 1,000 parts per million ("ppm") of DEHP when analyzed pursuant to U.S. Environmental Protection Agency testing methodologies 3580A and 8270C.

2.3 Commencing on the Effective Date, Tricam shall provide a clear and reasonable Proposition 65 warning for any Product that it ships, sells, or offers to ship or sell in California

1 that are not Reformulated Products. Tricam shall provide the warning affixed to the packaging or  
2 labeling with the following statement:

3  
4 **CALIFORNIA PROPOSITION 65 WARNING:**

5 This product contains chemicals known to the State of California to cause cancer, and  
6 birth defects or other reproductive harm.

7 The warning shall be prominently placed with such conspicuousness as compared with  
8 other words, statements, designs, or devices as to render it likely to be read and understood by an  
9 ordinary individual under customary conditions before purchase or use. Each warning shall be  
10 provided in a manner such that the consumer or user is reasonably likely to understand to which  
11 specific Product the warning applies.

12 In the event that the Office of Environmental Health Hazard Assessment promulgates one  
13 or more regulations requiring or permitting warning text and/or methods of transmission different  
14 than those set forth above, Tricam shall be entitled to use, at its discretion, such other warning  
15 text and/or method of transmission without being deemed in breach of this Consent Judgment.

16 **3. Entry of Consent Judgment**

17 3.1 The parties hereby request that the Court promptly approve and enter this Consent  
18 Judgment. Upon entry of this Consent Judgment, Ferreiro and Tricam waive their respective  
19 rights to a hearing or trial on the allegations of the Complaint and Notice which are at issue in the  
20 Action.

21 3.2 In the event that the California Attorney General objects or otherwise comments  
22 on one or more provisions of this Consent Judgment, Ferreiro and Tricam agree to take  
23 reasonable steps to satisfy such concerns or objections.

24 **4. Matters Covered By This Consent Judgment**

25 4.1 This Consent Judgment is a final and binding resolution between Ferreiro, acting  
26 on his own behalf, and on behalf of the public and in the public interest, and Tricam, and shall  
27 have preclusive effect such that no other person or entity, whether purporting to act in his, her, or  
28 its interests or the public interest shall be permitted to pursue and/or take any action with respect  
to: (i) any violation of Proposition 65 that was alleged in the Complaint, or that could have been

1 brought pursuant to the Notice; or (ii) any other statutory or common law claim, to the fullest  
2 extent that any of the foregoing described in (i) or (ii) were or could have been asserted by any  
3 person or entity against Tricam and/or Wal-Mart based on their alleged exposure of persons to the  
4 Products, or its alleged failure to provide a clear and reasonable warning of exposure to such  
5 individuals, or (iii) as to alleged exposures to the Products, any other claim based on whole or in  
6 part on the facts alleged in the Complaint and the Notice, whether or not based on actions  
7 committed by Tricam or Wal-Mart. As to alleged exposures to the Product, compliance with the  
8 terms of this Consent Judgment resolves any issue, now and in the future, and is deemed  
9 sufficient to satisfy all obligations concerning, compliance by Tricam and Wal-Mart with the  
10 requirements of Proposition 65 with respect to the Product, and any alleged resulting exposure.

11 4.2 As to alleged exposures to the Product, Ferreiro waives all rights to institute any  
12 form of legal action, and releases all claims against Tricam, Wal-Mart and each entity to whom  
13 Tricam or Wal-Mart directly or indirectly has distributed or sold the Products, including but not  
14 limited to, downstream distributors, wholesalers, customers, retailers (including but not limited to  
15 Wal-Mart Stores, Inc. and its affiliates and subsidiaries), Wal-Mart (including their respective  
16 parents, subsidiaries or affiliates, and assigns of any of them, who may use, maintain, distribute or  
17 sell the Product) (collectively, "Releasees"), whether under Proposition 65 or otherwise, arising  
18 out of or resulting from, or related directly or indirectly to, in whole or in part, the Product or the  
19 Action, including but not limited to any exposure to, or failure to warn with respect to, the  
20 Product (referred to collectively in this Section as the "Claims"). In furtherance of the foregoing,  
21 as to alleged exposures to the Product, Ferreiro waives any and all rights and benefits which he  
22 now has, or in the future may have, conferred upon him with respect to the Claims by virtue of  
23 the provisions of § 1542 of the California Civil Code, which provides as follows:

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

28 Ferreiro understands and acknowledges that the significance and consequence of this

1 waiver of California Civil Code § 1542 is that even if Ferreiro suffers future damages arising out  
2 of or resulting from, or related directly or indirectly to, in whole or in part, the Products, including  
3 but not limited to any exposure to, or failure to warn with respect to exposure to, the Products,  
4 Ferreiro will not be able to make any claim for those damages against Releasees.

5 With respect to this Section 1542 waiver, each of the parties hereto acknowledges that  
6 he/it has consulted with legal counsel regarding the implications of Section 1542 and a waiver  
7 thereof.

8 **5. Enforcement of Judgment**

9 5.1 The terms of this Consent Judgment shall be enforced exclusively by the parties  
10 hereto. The parties may, by noticed motion or order to show cause before the Court, giving the  
11 notice required by law, enforce the terms and conditions contained herein. In any proceeding  
12 brought by either party to enforce this Consent Judgment, such party may seek whatever fines,  
13 costs, penalties or remedies as may be provided by law for any violation of this Consent  
14 Judgment.

15 **6. Modification of Judgment**

16 6.1 This Consent Judgment may be modified only by written agreement of the parties  
17 upon entry of a modified Consent Judgment by the Court thereon, or upon motion of any party as  
18 provided by law and upon an entry of a modified Consent Judgment by the Court.

19 6.2 Should any court enter final judgment in a case brought by Ferreiro or the People  
20 involving the Product that sets forth standards defining when Proposition 65 warnings will or will  
21 not be required (“Alternative Standards”), or if the California Attorney General otherwise  
22 provides written endorsement (i.e., a writing that is circulated by the Attorney General that is not  
23 intended for the purpose of soliciting further input or comments) of Alternative Standards  
24 applicable to products that are of the same general type and function as the Product and  
25 constructed from the same materials, Tricam shall be entitled to seek a modification of this  
26 Consent Judgment on forty-five (45) days’ notice to Ferreiro so as to be able to utilize and rely on  
27 such Alternative Standards in lieu of those set forth in Section 7 of this Consent Judgment.  
28 Ferreiro shall not unreasonably contest any proposed application to effectuate such a modification

1 provided that the Product for which such a modification is sought are of the same general type  
2 and function as those to which the Alternative Standards apply.

3 **7. Settlement Payment**

4 7.1 In settlement of all the claims referred to in this Consent Judgment, and without  
5 any admission of liability therefore, Tricam shall make the following monetary payments:

6 7.1.1 Tricam shall pay a total of \$1,500.00 in civil penalties (the "Civil Penalty")  
7 in accordance with this Section. The Civil Penalty will be allocated in accordance with California  
8 Health & Safety Code §§ 25249.12(c)(1) and (d), with 75% of the funds remitted to the California  
9 Office of Environmental Health Hazard Assessment ("OEHHA") and the remaining 25% of the  
10 funds remitted to Ferreiro. Each respective portion of the Civil Penalty shall be delivered to the  
11 addresses listed in Section 7.1.3 below.

12 7.1.2 In addition to the Civil Penalty, Tricam shall pay \$13,500.00 to Brodsky &  
13 Smith, LLC ("Brodsky Smith") as complete reimbursement for Ferreiro's attorneys' fees and  
14 costs, including all investigation and laboratory costs and expert fees, incurred in the course of  
15 serving the Notice and bringing the Action, and in enforcing Proposition 65, including without  
16 limitation, preparation of the Notice letter and discussions with the California Attorney General.  
17 Payment shall be made within fifteen (15) days of the Effective Date.

18 7.1.3 Within fifteen (15) days of the Effective Date, Tricam shall issue two  
19 separate checks for the Civil Penalty amounts to (a) "OEHHA" in the amount of \$1,000.0000; and  
20 (b) "Brodsky & Smith, LLC in Trust for Ferreiro" in the amount of \$500. Payment to Ferreiro  
21 pursuant to this Section shall be delivered to the following payment address:

22 Evan J. Smith, Esq.  
23 Brodsky & Smith, LLC  
24 Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004

25 Payment owed to OEHHA (EIN: 68-0284486) pursuant to this Section shall be delivered directly  
26 to OEHHA (Memo Line "Prop 65 Penalties") at one of the following address(es):

27 For United States Postal Service Delivery:  
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2 Mike Gyurics  
3 Fiscal Operations Branch Chief  
4 Office of Environmental Health Hazard Assessment  
5 P.O. Box 4010  
6 Sacramento, CA 95812-4010

7 For Non-United States Postal Service Delivery:

8 Mike Gyurics  
9 Fiscal Operations Branch Chief  
10 Office of Environmental Health Hazard Assessment  
11 1001 I Street  
12 Sacramento, CA 95814

13 A copy of the check payable to OEHHA shall be mailed to Brodsky & Smith, LLC at the address  
14 set forth above as proof of payment to OEHHA.

15 **8. Notices**

16 8.1 Any and all notices between the parties provided for or permitted under this  
17 Consent Judgment, or by law, shall be in writing and personally delivered or sent by: (i) first-  
18 class (registered or certified mail) return receipt requested; or (ii) overnight or two-day courier on  
19 any party by the other party to the following addresses:

20 For Tricam:

21 Kurt A. Dreibholz  
22 Kneafsey & Friend LLP  
23 800 Wilshire Blvd., Suite 710  
24 Los Angeles, CA 90017  
25 T: 213.892.1200

26 For Ferreiro:

27 Evan J. Smith.  
28 BRODSKY & SMITH, LLC  
Two Bala Plaza, Suite 510  
Bala Cynwyd, PA 19004  
T: 877.354.2590

Any party, from time to time, may specify in writing to the other party a change of address to which all notices and other communications shall be sent.

**9. Authority to Stipulate**

9.1 Each signatory to this Consent Judgment certifies that he or she is fully authorized by the party he or she represents to enter into this Consent Judgment and to execute it on behalf of

1 the party represented and legally to bind that party.

2 **10. Counterparts**

3 10.1 This Consent Judgment may be signed in counterparts and shall be binding upon  
4 the parties hereto as if all said parties executed the original hereof.

5 **11. Retention of Jurisdiction**

6 11.1 This Court shall retain jurisdiction of this matter to implement the Consent  
7 Judgment under Code of Civil Procedure section 664.6.

8 **12. Service on the California Attorney General**

9 12.1 Ferreiro shall serve a copy of this Consent Judgment, signed by both parties, on the  
10 California Attorney General on behalf of the parties so that the Attorney General may review this  
11 Consent Judgment prior to its submittal to the Court for Approval. No sooner than forty-five (45)  
12 days after the Attorney General has received the aforementioned copy of this Consent Judgment,  
13 and in the absence of any written objection by the Attorney General to the terms of this Consent  
14 Judgment, the parties may then submit it to the Court for Approval.

15 **13. Entire Agreement**

16 13.1 This Consent Judgment contains the sole and entire agreement and understanding  
17 of the parties with respect to the entire subject matter hereof, and any and all discussions,  
18 negotiations, commitments and understandings related thereto. No representations, oral or  
19 otherwise, express or implied, other than those contained herein have been made by any party  
20 hereto. No other agreements not specifically referred to herein, oral or otherwise, shall be deemed  
21 to exist or to bind any of the parties.

22 **14. Governing Law and Construction**

23 14.1 The validity, construction and performance of this Consent Judgment shall be  
24 governed by the laws of the State of California, without reference to any conflicts of law  
25 provisions under California law.

26 **15. Court Approval**

27 15.1 If this Consent Judgment is not approved by the Court, it shall be of no force or  
28 effect, and cannot be used in any proceeding for any purpose.

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**16. Intent and Purpose**

16.1 This Consent Judgment and the information embraced herein are intended solely for the purpose of: (1) a full settlement and release of disputed claims between the parties as alleged in the Complaint; (2) avoiding prolonged litigation; and (3) obtaining court approval of this Consent Judgment. Except as specifically set forth above, this Consent Judgment may not be used or disseminated for any other purpose, including, but not limited to, advertising, soliciting or referring business, posting on social media, press releases and the like.

**IT IS SO STIPULATED:**

Dated: Feb 22, 2016

Dated: 2-10-16

By: Anthony Ferreira  
Anthony Ferreira

By: [Signature]  
Tricam Industries, Inc.

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

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

\_\_\_\_\_  
Judge of the Superior Court