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SUPERIOR COURT OF THE STATE OF CALIFORNIA
COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

LAURENCE VINOUCUR,
Plaintiff,
v.
EVENFLO COMPANY, INC.; et al.
Defendants.

Case No. RG 13-673019

Assigned for All Purposes to
Judge George C. Hernandez, Jr.,
Department 17

**[PROPOSED] CONSENT JUDGMENT AS
TO EVENFLO COMPANY, INC.**

(Health & Safety Code § 25249.6 et seq.)

Complaint Filed: March 26, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Laurence Vinocur
4 (“Plaintiff”) and the defendant Evenflo Company, Inc. (“Settling Defendant”), with Plaintiff and the
5 Settling Defendant collectively referred to as the “Parties.”

6 **1.2 Plaintiff**

7 Plaintiff is an individual residing in the State of California who seeks to promote awareness
8 of exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer and commercial products.

10 **1.3 Settling Defendant**

11 The Settling Defendant employs ten or more persons and is a person in the course of doing
12 business for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, California
13 Health & Safety Code section 25249.6, *et seq.* (“Proposition 65”).

14 **1.4 General Allegations**

15 Plaintiff alleges that the Settling Defendant manufactured, imported, sold and/or distributed
16 for sale in California, products with foam cushioned components containing tris(1,3-dichloro-2-
17 propyl) phosphate (“TDCPP”) and tris(2-chlorethyl) phosphate (“TCEP”) without the requisite
18 Proposition 65 health hazard warnings.

19 Pursuant to Proposition 65, on October 28, 2011, California identified and listed TDCPP as
20 a chemical known to cause cancer. TDCPP became subject to the “clear and reasonable warning”
21 requirements of Proposition 65 one year later on October 28, 2012. Cal. Code Regs., tit. 27, §
22 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b).

23 Pursuant to Proposition 65, on April 1, 1992, California identified and listed TCEP as a
24 chemical known to cause cancer. TCEP became subject to the “clear and reasonable warning”
25 requirements of the Act one year later on April 1, 1993. *Id.*

26 Plaintiff alleges that TDCPP and TCEP escape from foam padding, leading to human
27 exposures.

28

1 **1.5 Product Description**

2 The categories of products that are covered by this Consent Judgment (collectively, the
3 “Products”) are:

- 4 a. Upholstered Children’s Car Seats with Foam Padding manufactured, distributed,
5 imported, or sold by the Settling Defendant;
- 6 b. The *Evenflo AMP LX No-Black Booster, Style: Red Splat, Item 2176, #34111336,*
7 *#25803764 (#0 32884 17645 8);*
- 8 c. The *Evenflo AMP LX Belt-Positioning Booster, Paintbrush Pink, #34111424,*
9 *#25803861 (#0 32884 17937 4);*
- 10 d. The *Evenflo AMP Graphics No Back Booster Car Seat, Retro Flowers, #34111220,*
11 *CPL-25802977 (#0 32884 17338 9);*
- 12 e. The *Evenflo AMP Graphics No-Back Booster Car Seat, Red Music, #34111221,*
13 *CPL-25802976 (#0 32884 17339 6); and*
- 14 f. The *Evenflo AMP Limited No Back Booster Car Seat, Blue Flames, #34121296,*
15 *CPL-25803326 (#0 32884 17500 0).*

16 Polyurethane foam that is supplied, shaped or manufactured for use as a component of
17 another product, such as upholstered furniture, but which is not itself a finished product, is
18 specifically excluded from the definition of Products and shall not be identified by the Settling
19 Defendant on Exhibit A as a Product.

20 **1.6 Notices of Violation**

21 On or around December 28, 2012, Plaintiff served Settling Defendant and certain requisite
22 public enforcement agencies with a “60-Day Notice of Violation” (“December 28 Notice”) that
23 provided the recipients with notice of alleged violations of Proposition 65 based on the alleged
24 failure to warn customers, consumers, and workers in California that its Products expose users to
25 TDCPP.

26 Based on his further investigation, on or around February 26, 2013, Plaintiff issued another
27 60-Day Notice of Violation to the Settling Defendant and Target Corporation (“Target”) as well as
28 to certain requisite public enforcement agencies (“February 26 Notice”) that provided the recipients

1 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
2 consumers, and workers in California that its Products expose users to TCEP.

3 On or around March 20, 2013, Plaintiff issued a “Supplemental 60-Day Notice of Violation”
4 to the Settling Defendant and Target as well as to certain requisite public enforcement agencies
5 (“March 20 Notice”) that provided the recipients with notice of alleged violations of Proposition 65
6 based on the alleged failure to warn customers, consumers, and workers in California that its
7 Products expose users to TDCPP.

8 On or around April 11, 2013, Plaintiff issued a “Supplemental 60-Day Notice of Violation”
9 to the Settling Defendant, Target, Amazon.com, Inc. (“Amazon”), Quidsi, Inc. (“Quidsi”), Wayfair
10 LLC (“Wayfair”), and Wal-Mart Stores, Inc. (“Wal-Mart”) as well as to certain requisite public
11 enforcement agencies (“April 11 Notice”) that provided the recipients with notice of alleged
12 violations of Proposition 65 based on the alleged failure to warn customers, consumers, and
13 workers in California that its Products expose users to TCEP.

14 To the best of the Parties’ knowledge, no public enforcer has commenced or is diligently
15 prosecuting the allegations set forth in the December 28 Notice, February 26 Notice, March 20
16 Notice, or the April 11 Notice (collectively, the “Notices”).

17 **1.7 Complaint**

18 On March 26, 2013, Plaintiff filed a Complaint in the Superior Court in and for the County
19 of Alameda against the Settling Defendant, *Laurence Vinocur v. Evenflo Company, Inc, et al.*, Case
20 No. RG 13-673019, alleging violations of Proposition 65, based in part on the alleged unwarned
21 exposures to TDCPP contained in the Products (“Complaint”). On August 1, 2013, Plaintiff filed a
22 First Amended Complaint, naming additional defendants and alleging violations of Proposition 65
23 by the Settling Defendant based on exposures to both TDCPP and TCEP contained in the Products
24 (“First Amended Complaint”).

25 **1.8 No Admission**

26 The Settling Defendant denies the material factual and legal allegations contained in
27 Plaintiff’s Notices, Complaint, and First Amended Complaint and maintains that all products that is
28 has manufactured, imported, distributed, and/or sold in California, including the Products, have

1 been and are in compliance with all laws. Nothing in this Consent Judgment shall be construed as
2 an admission by the Settling Defendant of any fact, finding, conclusion, issue of law, or violation of
3 law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by
4 the Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law. However,
5 this section shall not diminish or otherwise affect the Settling Defendant's obligations,
6 responsibilities, and duties under this Consent Judgment.

7 **1.9 Consent to Jurisdiction**

8 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
9 jurisdiction over the Settling Defendant as to the allegations contained in the Complaint, that venue
10 is proper in the County of Alameda, and that this Court has jurisdiction to enter and enforce the
11 provisions of this Consent Judgment pursuant to Proposition 65 and California Code of Civil
12 Procedure section 664.6.

13 **2. DEFINITIONS**

14 **2.1 California Customers**

15 "California Customer" shall mean any customer that the Settling Defendant reasonably
16 understands is located in California, has a California warehouse or distribution center, maintains a
17 retail outlet in California, or has made internet sales into California on or after January 1, 2011.

18 **2.2 Detectable**

19 "Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent
20 of .0025%) each of TDCPP and/or TCEP in any material, component, or constituent of a subject
21 product, when analyzed by an accredited laboratory pursuant to EPA testing methodologies 3545
22 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
23 presence, and measure the quantity, of TDCPP and/or TCEP in a solid substance.

24 **2.3 Effective Date and Entry Date**

25 "Effective Date" shall mean November 27, 2013. "Entry Date" is the date upon which the
26 Court approves and enters this Consent Judgment.

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1 **2.4 Reformulated Products**

2 “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP
3 or TCEP.

4 **2.5 Reformulation Standard**

5 The “Reformulation Standard” shall mean containing no Detectable amount of TDCPP
6 and/or TCEP.

7 **2.6 Retailer**

8 “Retailer” means an individual or entity that offers a Product for retail sale to consumers in
9 the State of California.

10 **3. INJUNCTIVE RELIEF: REFORMULATION**

11 **3.1 Reformulation Commitment**

12 Commencing on March 31, 2014, Settling Defendant shall not manufacture or import for
13 distribution or sale to California Customers, or cause to be manufactured or imported for
14 distribution or sale to California Customers, any Products that are not Reformulated Products.

15 **3.2 Vendor Notification/Certification**

16 On or before the Effective Date, the Settling Defendant shall provide written notice to all of
17 its then-current vendors of the Products that will be sold or offered for sale in California, or to
18 California Customers, instructing each such vendor to use reasonable efforts to provide only
19 Reformulated Products for potential sale in California. In addressing the obligation set forth in the
20 preceding sentence, a Settling Defendant shall not employ statements that will encourage a vendor
21 to delay compliance with the Reformulation Standard. The Settling Defendant shall subsequently
22 obtain written certifications, no later than April 1, 2014, from such vendors, and any newly engaged
23 vendors, that the Products manufactured by such vendors are in compliance with the Reformulation
24 Standard. Certifications shall be held by the Settling Defendant for at least two years after their
25 receipt and shall be made available to Plaintiff upon request.

26 **3.3 Products No Longer in a Settling Defendant’s Control**

27 No later than forty-five days after the Effective Date, the Settling Defendant shall send a
28 letter, electronic or otherwise (“Notification Letter”) to: (1) each California Customer and/or

1 Retailer to which it, after October 28, 2011, supplied any item for resale in California described as
2 an exemplar in any of the Notices (“Exemplar Product”); and (2) any California Customer and/or
3 Retailer that the Settling Defendant reasonably understands or believes had any inventory for resale
4 in California of any Exemplar Product(s) as of April 3, 2013. The Notification Letter shall advise
5 the recipient that the Exemplar Product(s) contains TDCPP and or TCEP, chemicals known to the
6 State of California to cause cancer, and request that the recipient either: (a) label the Exemplar
7 Products remaining in inventory for sale in California, or to California Customers, pursuant to
8 Section 3.5; or (b) return, at the Settling Defendant’s sole expense, all units of the Exemplar
9 Product(s) held for sale in California, or to California Customers, to the Settling Defendant or a
10 party the Settling Defendant has designated. The Notification Letter shall require a response from
11 the recipient within twenty days confirming whether the Exemplar Product(s) will be labeled or
12 returned. The Settling Defendant shall maintain records of all correspondence or other
13 communications generated pursuant to this Section for two years after the Effective Date and shall
14 promptly produce copies of such records upon Plaintiff’s written request.

15 **3.4 Current Inventory**

16 Any Products in, or manufactured and en route to, the Settling Defendant’s inventory as of
17 or after December 31, 2013, that do not qualify as Reformulated Products and that the Settling
18 Defendant has reason to believe may be sold or distributed for sale in California, shall contain a
19 clear and reasonable warning as set forth in Section 3.5 below unless Section 3.6 applies.

20 **3.5 Product Warnings**

21 **3.5.1 Product Labeling**

22 Any warning provided under Section 3.3 or 3.4 above shall be affixed to the packaging,
23 labeling, or directly on each Product. Each warning shall be prominently placed with such
24 conspicuousness as compared with other words, statements, designs, or devices as to render it likely
25 to be read and understood by an ordinary individual under customary conditions before purchase.
26 Each warning shall be provided in a manner such that the consumer or user understands to which
27 specific Product the warning applies, so as to minimize the risk of consumer confusion.
28

1 A warning provided pursuant to this Consent Judgment shall state, as appropriate:¹

2 **WARNING:** This product contains TDCPP, a flame
3 retardant chemical known to the State
of California to cause cancer.

4 or

5 **WARNING:** This product contains TCEP, a flame
6 retardant chemical known to the State
of California to cause cancer.

6 or

7 **WARNING:** This product contains TDCPP and
8 TCEP, flame retardant chemicals
known to the State of California to
9 cause cancer.

10 Warnings with the following characteristics will be deemed to be clear and reasonable for
11 purposes of this Consent Judgment: (a) a yellow hang tag measuring 3” x 5”, with no less than 12
12 point font, with the warning language printed on each side of the hang tag, which shall be affixed
13 directly to the Product; (b) a yellow warning sign measuring 8.5” x. 11”, with no less that 32 point
14 font, with the warning language printed on each side, which shall be affixed directly to the Product;
15 and (c) for Products sold at retail in a box or packaging, a yellow warning sticker measuring 3” x
16 3”, with no less than 12 point font, which shall be affixed directly to the Product packaging.

17 **3.5.2 Internet Website Warning**

18 A warning shall be given in conjunction with the sale of the Products to California, or
19 California Customers, via the internet, which warning shall appear on one or more web pages
20 displayed to a purchaser during the checkout process. The following warning statement shall be
21 used and shall: (a) appear adjacent to or immediately following the display, description, or price of
22 the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer.

23
24 ¹ The regulatory safe harbor warning language specified in California Code of Regulations, title 27,
25 section 25603.2 (“Section 25603.2”) may also be used if the Settling Defendant had begun to use it, prior to
26 the Effective Date. A Settling Defendant that seeks to use alternative warning language, other than the
27 language specified above or the safe harbor warning specified in Section 25603.2, or that seeks to use an
28 alternate method of transmission of the warning, must obtain the Court’s approval of its proposed alternative
and provide all Parties and the Office of the Attorney General with timely notice and the opportunity to
comment or object before the Court acts on the request. The Parties agree that the following warning
language shall not be deemed to meet the requirements of California Code of Regulations, title 27, section
25601 *et seq.* and shall not be used pursuant to this Consent Judgment: (a) “cancer or birth defects or other
reproductive harm” and (b) “cancer, birth defects or other reproductive harm.”

1 The warning, hyperlink and/or pop-up box text shall be the same type size or larger than the
2 Product description text, and consist of the following language, as appropriate:²

3 **WARNING:** This product contains TDCPP, a flame
4 retardant chemical known to the State
5 of California to cause cancer.

6 or

7 **WARNING:** This product contains TCEP, a flame
8 retardant chemical known to the State
9 of California to cause cancer.

10 or

11 **WARNING:** This product contains TDCPP and
12 TCEP, flame retardant chemicals
13 known to the State of California to
14 cause cancer.

15 **3.6 Alternatives to Interim Warnings**

16 The obligations of a Settling Defendant under Section 3.3 shall be relieved provided the
17 Settling Defendant certifies on or before December 15, 2013, that only Exemplar Products meeting
18 the Reformulation Standard will be offered for sale in California, or to California Customers for
19 sale in California, after December 31, 2013.

20 The obligations of a Settling Defendant under Section 3.4 shall be relieved provided the
21 Settling Defendant certifies on or before December 15, 2013, that, after June 30, 2014, it will only
22 distribute or cause to be distributed for sale in, or sell in, California, or to California Customers for
23 sale in California, Products (i.e., Products beyond the Exemplar Product) meeting the
24 Reformulation Standard. The certifications provided by this Section are material terms and time is
25 of the essence.

26 **4. MONETARY PAYMENTS**

27 **4.1 Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

28 In settlement of all the claims referred to in this Consent Judgment, the Settling Defendant
shall pay the civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty
payment will be allocated in accordance with California Health & Safety Code section
25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental

² The preceding footnote applies in this context as well.

1 Health Hazard Assessment (“OEHHA”), and the remaining 25% of the penalty remitted to “The
2 Chanler Group in Trust for Vinocur.” Each penalty payment shall be made within five business
3 days of the date it is due and be delivered to the addresses listed in Section 4.5 below. The Settling
4 Defendant shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts
5 due and owing under this Section that are not received within five business days of the due date.

6 **4.1.1 Initial Civil Penalty**

7 On or before the Effective Date, the Settling Defendant shall make an initial civil penalty
8 payment in the amount identified on Exhibit A.

9 **4.1.2 Second Civil Penalty**

10 On or before January 15, 2014, the Settling Defendant shall make a second civil penalty
11 payment in the amount identified on Exhibit A. The amount of the second penalty may be reduced
12 according to any penalty waiver the Settling Defendant is eligible for under Sections 4.1.4(i) and
13 4.1.4(iii), below.

14 **4.1.3 Third Civil Penalty**

15 On or before November 30, 2014, the Settling Defendant shall make a third civil penalty
16 payment in the amount identified on Exhibit A. The amount of the third penalty may be reduced
17 according to any penalty waiver the Settling Defendant is eligible for under Sections 4.1.4(ii) and
18 4.1.4(iv), below.

19 **4.1.4 Reductions to Civil Penalty Payment Amounts**

20 The Settling Defendant may reduce the amount of the second and/or third civil penalty
21 payments identified on Exhibit A by providing Plaintiff with certification of certain efforts
22 undertaken to reformulate its Products or limit the ongoing sale of non-reformulated Products in
23 California. The options to provide a written certification in lieu of making a portion of the Settling
24 Defendant’s civil penalty payment constitute material terms of this Consent Judgment, and with
25 regard to such terms, time is of the essence.
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1 **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of**
2 **Products Sold or Offered for Sale in California**

3 As shown on Exhibit A, a portion of the second civil penalty shall be waived, to the extent
4 that the Settling Defendant has agreed that, as of November 1, 2013, and continuing into the future,
5 it shall only manufacture or import for distribution or sale to California Customers or cause to be
6 manufactured or imported for distribution or sale to California Customers, Reformulated Products.
7 An officer or other authorized representative of the Settling Defendant, upon exercise of this
8 election, shall provide Plaintiff with a written certification confirming compliance with such
9 conditions, which certification must be received by Plaintiff’s counsel on or before December 15,
10 2013.

11 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation**

12 As shown on Exhibit A, a portion of the third civil penalty shall be waived, to the extent that
13 the Settling Defendant has agreed that, as of March 15, 2014, and continuing into the future, it shall
14 only manufacture or import for distribution or sale in California or cause to be manufactured or
15 imported for distribution or sale in California, Reformulated Products which also do not contain
16 tris(2,3-dibromopropyl)phosphate (“TDBPP”) in a detectable amount of more than 25 parts per
17 million (“ppm”) (the equivalent of .0025%) in any material, component, or constituent of a subject
18 product, when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies
19 3545 and 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
20 presence, and measure the quantity, of TDBPP in a solid substance. An officer or other authorized
21 representative of the Settling Defendant, upon its exercise of this election, shall provide Plaintiff
22 with a written certification confirming compliance with such conditions, which certification must
23 be received by Plaintiff’s counsel on or before November 15, 2014.

24 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
25 **Exemplar Products from the California Market**

26 As shown on Exhibit A, a portion of the second civil penalty shall be waived, if an officer or
27 other authorized representative of the Settling Defendant provides Plaintiff with written
28 certification, by December 15, 2013, confirming that each individual or establishment in California

1 to which it supplied the Exemplar Product(s) after October 28, 2011, has elected, pursuant to
2 Section 3.3, to return all Exemplar Product(s) held for sale in California.

3 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
4 **California of Unreformulated Inventory**

5 As shown on Settling Defendant's Exhibit A, a portion of the third civil penalty shall be
6 waived, if an officer or other authorized representative of the Settling Defendant provides Plaintiff
7 with written certification, on or before November 15, 2014, confirming that, as of July 1, 2014, it
8 has and will continue to distribute, offer for sale, or sell in California, or to California Customers,
9 only Reformulated Products.

10 **4.2 Representations**

11 The Settling Defendant represents that the sales data and other information concerning its
12 size, knowledge of Listed Chemicals, and prior reformulation and/or warning efforts, it provided to
13 Plaintiff was truthful to its knowledge and a material factor upon which Plaintiff has relied to
14 determine the amount of civil penalties assessed pursuant to Health & Safety Code section 25249.7
15 in this Consent Judgment. If, within nine months of the Effective Date, Plaintiff discovers and
16 presents to Settling Defendant, evidence demonstrating that the preceding representation and
17 warranty was materially inaccurate, then the Settling Defendant shall have thirty days to meet and
18 confer regarding the Plaintiff's contention. Should this thirty day period pass without any such
19 resolution between the Plaintiff and the Settling Defendant, Plaintiff shall be entitled to file a formal
20 legal claim including, but not limited to, a claim for damages for breach of contract.

21 The Settling Defendant further represents that in implementing the requirements set forth in
22 Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ commercial best efforts to
23 achieve reformulation of its Products on a nationwide basis and not employ statements that will
24 encourage a vendor to limit its compliance with the Reformulation Standard to goods intended for
25 sale to California Consumers.

26 **4.3 Stipulated Penalties for Certain Violations of the Reformulation Standard**

27 If Plaintiff provides notice and appropriate supporting information to the Settling Defendant
28 that levels of TDCPP or TCEP in excess of the Reformulation Standard have been detected in one

1 or more Products labeled or otherwise marked in an identifiable manner as manufactured or
2 imported after a deadline for meeting the Reformulation Standard has arisen under Sections 3.1 or
3 3.6 above, the Settling Defendant may elect to pay a stipulated penalty to relieve any further
4 potential liability under Proposition 65 or sanction under this Consent Judgment as to Products
5 sourced from the vendor in question.³ The stipulated penalty shall be \$1,500 if the violation level is
6 below 100 ppm and \$3,000 if the violation level is between 100 ppm and 249 ppm, this being
7 applicable for any amount in excess of the Reformulation Standards but under 250 ppm.⁴ Plaintiff
8 shall further be entitled to reimbursement of his associated expense in an amount not to exceed
9 \$5,000 regardless of the stipulated penalty level. The Settling Defendant must provide notice and
10 appropriate supporting information relating to the purchase (e.g. vendor name and contact
11 information including representative, purchase order, certification (if any) received from vendor for
12 the exemplar or subcategory of products), test results, and a letter from a company representative or
13 counsel attesting to the information provided, to Plaintiff within thirty calendar days of receiving
14 test results from Plaintiff's counsel. Any violation levels at or above 250 ppm shall be subject to
15 the full remedies provided pursuant to this Consent Judgment and at law.

16 **4.4 Reimbursement of Fees and Costs**

17 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute
18 without reaching terms on the amount of fees and costs to be reimbursed to him, thereby leaving
19 this fee reimbursement issue to be resolved after the material terms of the agreement had been
20 settled. Shortly after the other settlement terms had been finalized, the Settling Defendant
21 expressed a desire to resolve the fee and cost issue. The Settling Defendant then agreed to pay
22 Plaintiff and his counsel under general contract principles and the private attorney general doctrine
23 codified at California Code of Civil Procedure section 1021.5 for all work performed through the
24

25 ³ This Section shall not be applicable where the vendor in question had previously been found by the
26 Settling Defendant to have provided unreliable certifications as to meeting the Reformulation Standard in its
27 Products on more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a second
28 exceedance by the Settling Defendant's vendor at a level between 100 and 249 ppm shall not be available
after July 1, 2015.

⁴ Any stipulated penalty payments made pursuant to this Section should be allocated and remitted in
the same manner as set forth in Sections 4.1 and 4.5.

1 mutual execution of this agreement, including the fees and costs incurred as a result of
2 investigating, bringing this matter to the Settling Defendant’s attention, negotiating a settlement in
3 the public interest, and seeking court approval of the same. The Settling Defendant more
4 specifically agreed, upon the Court’s approval and entry of this Consent Judgment, to pay
5 Plaintiff’s counsel the amount of fees and costs indicated on Exhibit A. The Settling Defendant
6 further agreed to tender and shall tender its full required payment under this Section to a trust
7 account at The Chanler Group (made payable “In Trust for The Chanler Group”) within five
8 business days of the Effective Date. Such funds shall be released from the trust account upon the
9 Court’s approval and entry of this Consent Judgment.

10 **4.5 Payment Procedures**

11 **4.5.1 Issuance of Payments**

12 (a) All payments owed to Plaintiff and his counsel, pursuant to this
13 Consent Judgment shall be delivered to the following payment address:

14 The Chanler Group
15 Attn: Proposition 65 Controller
16 2560 Ninth Street
17 Parker Plaza, Suite 214
18 Berkeley, CA 94710

19 (b) All payments owed to OEHHA (EIN: 68-0284486), pursuant to this
20 Consent Judgment shall be delivered directly to OEHHA (Memo line “Prop 65 Penalties”)
21 at one of the following addresses, as appropriate:

22 For United States Postal Service Delivery:

23 Mike Gyurics
24 Fiscal Operations Branch Chief
25 Office of Environmental Health Hazard Assessment
26 P.O. Box 4010
27 Sacramento, CA 95812-4010

28 For Non-United States Postal Service Delivery:

Mike Gyurics
Fiscal Operations Branch Chief
Office of Environmental Health Hazard Assessment
1001 I Street
Sacramento, CA 95814

1 **4.5.2 Proof of Payment to OEHHA**

2 A copy of each check payable to OEHHA shall be mailed, simultaneous with payment, to
3 The Chanler Group at the address set forth in Section 4.5.1(a) above, as proof of payment to
4 OEHHA.

5 **4.5.3 Tax Documentation**

6 The Settling Defendant shall issue a separate 1099 form for each payment required by this
7 Section to: (a) Laurence Vinocur, whose address and tax identification number shall be furnished
8 upon request after this Consent Judgment has been fully executed by the Parties; (b) OEHHA, who
9 shall be identified as “California Office of Environmental Health Hazard Assessment” (EIN: 68-
10 0284486) in the 1099 form, to be delivered directly to OEHHA, P.O. Box 4010, Sacramento, CA
11 95814, and (c) “The Chanler Group” (EIN: 94-3171522) to the address set forth in Section 4.5.1(a)
12 above.

13 **5. CLAIMS COVERED AND RELEASED**

14 **5.1 Plaintiff’s Release of Proposition 65 Claims**

15 Plaintiff, acting on his own behalf and in the public interest, releases the Settling Defendant,
16 its owners/shareholders, parent companies, affiliates, and subsidiaries, directors, officers, managers,
17 employees, agents, representatives, attorneys, franchisees, cooperative members, licensees, and
18 each entity to whom the Settling Defendant directly or indirectly distributes or sells Products,
19 including, but not limited, to downstream distributors, wholesalers, customers, Retailers including,
20 but not limited to, Target Corporation, Wal-Mart Stores, Inc., Amazon.com, Inc., Quidsi, Inc.,
21 Wayfair LLC, and their owners/shareholders, parent companies, affiliates, and subsidiaries,
22 directors, officers, managers, employees, agents, representatives, attorneys, franchisees, cooperative
23 members, and licensees (collectively, “Releasees”), from all claims for violations of Proposition 65
24 through the Effective Date based on unwarned exposures to the TDCPP and TCEP in the Products
25 manufactured, imported, distributed, or sold by the Settling Defendant prior to the Effective Date.
26 Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65
27 with respect to exposures to TDCPP and TCEP from the Products manufactured, imported,
28

1 distributed, or sold by the Settling Defendant prior to the Effective Date. The Parties further
2 understand and agree that this Section 5.1 release shall not extend upstream to any entities.

3 **5.2 Plaintiff's Individual Releases of Claims**

4 Plaintiff, in his individual capacity only and *not* in his representative capacity, provides a
5 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
6 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
7 liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown,
8 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP and
9 TCEP in the Products manufactured, imported, distributed, or sold by the Settling Defendant prior
10 to the Effective Date. The Parties further understand and agree that this Section 5.2 release shall
11 include all of the Releasees identified in Section 5.1 as to the Products manufactured, imported,
12 distributed, or sold by the Settling Defendant prior to the Effective Date, and likewise shall not
13 extend upstream to any entities that manufactured the Products, or any component parts thereof, or
14 any distributors or suppliers who sold the Products, or any component parts thereof, to Settling
15 Defendant.

16 The Plaintiff, also in his individual capacity, certifies that he has read Section 1542 of the
17 Civil Code of the State of California, which has been set forth below:

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

24 The Plaintiff hereby waives application of Section 1542 of the Civil Code and expressly,
25 voluntarily, and knowingly waives any and all rights he may have under such statutes as to claims
26 regarding unwarned exposures to TDCPP and TCEP from the Products. Plaintiff further expressly,
27 voluntarily, and knowingly waives any and all rights he may have under any other statutes or
28 common law principles in California or the statutes, civil law, or common law of any other
jurisdiction, foreign or domestic, purporting to have similar effect.

1 **5.3 Limits of Plaintiff’s Release**

2 The releases described in this Section 5 cover only the Settling Defendant’s Products.
3 Nothing in this Section 5 affects Plaintiff’s right to commence or prosecute an action under
4 Proposition 65 against a Releasee that does not involve the Settling Defendant’s Products.

5 **5.4 Settling Defendant’s Release of Plaintiff**

6 The Settling Defendant, on behalf of itself, its past and current agents, representatives,
7 attorneys, successors, and assignees, hereby waives any and all claims against Plaintiff and his
8 attorneys and other representatives, for any and all actions taken or statements made (or those that
9 could have been taken or made) by Plaintiff and his attorneys and other representatives, whether in
10 the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this
11 matter with respect to the Products.

12 Settling Defendant certifies that its appropriately authorized agent, officer, or director has
13 read Section 1542 of the Civil Code of the State of California, which has been set forth below:

14 A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS
15 WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO
16 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
17 WITH THE DEBTOR.

18 The Settling Defendant hereby waives application of Section 1542 of the Civil Code and
19 expressly, voluntarily, and knowingly waives any and all rights it may have under such statutes.
20 The Settling Defendant further expressly, voluntarily, and knowingly waives any and all rights it
21 may have under any other statutes or common law principles in California or the statutes, civil law,
22 or common law of any other jurisdiction, foreign or domestic, purporting to have similar effect.

23 **5.5 Plaintiff’s Request for Dismissal of Matter**

24 Plaintiff, through his counsel, will file a request for dismissal without prejudice in this
25 matter as to all named parties by January 1, 2015, unless Settling Defendant is found prior to that
26 date to not be in full compliance with the terms of this consent judgment. Settling Defendant agrees
27 to pay any and all costs which any Releasees may seek from Plaintiff or his counsel related to the
28 Notices, Complaint, or First Amended Complaint.

1 **COURT APPROVAL**

2 This Consent Judgment is not effective until it is approved and entered by the Court and
3 shall be null and void if, for any reason, it is not approved in its entirety and entered by the Court
4 within one year after it has been fully executed by the Parties. If the Court does not approve the
5 Consent Judgment, the Parties shall meet and confer as to whether to modify the language or appeal
6 the ruling. If the Parties do not jointly agree on a course of action to take, then the case shall
7 proceed in its normal course on the Court’s trial calendar. If the Court’s approval is ultimately
8 overturned by an appellate court, the Parties shall meet and confer as to whether to modify the
9 terms of this Consent Judgment. If the Parties do not jointly agree on a course of action to take,
10 then the case shall proceed in its normal course on the Court’s trial calendar. In the event that this
11 Consent Judgment is entered by the Court and subsequently overturned by any appellate court, any
12 monies that have been provided to OEHHA, Plaintiff or his counsel pursuant to Section 4, above,
13 shall be refunded within fifteen days of the appellate decision becoming final. If the Court does not
14 approve and enter the Consent Judgment within one year of the Effective Date, any monies that
15 have been provided to OEHHA or held in trust for Plaintiff or his counsel pursuant to Section 4,
16 above, shall be refunded to the Settling Defendant within fifteen days.

17 **GOVERNING LAW**

18 The terms of this Consent Judgment shall be governed by the laws of the State of California.
19 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
20 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
21 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered
22 inapplicable by reason of law generally as to the Products, then the Settling Defendant may provide
23 written notice to Plaintiff of any asserted change in the law, and shall have no further obligations
24 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
25 affected. Nothing in this Consent Judgment shall be interpreted to relieve the Settling Defendant
26 from any obligation to comply with any pertinent state or federal law or regulation.
27
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1 **8. NOTICES**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to
3 this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class
4 registered or certified mail, return receipt requested; or (iii) overnight courier to any party by the
5 other party at the following addresses:

6 To Settling Defendant:	To Plaintiff:
7 At the address shown on Exhibit A	Proposition 65 Coordinator
	The Chanler Group
	2560 Ninth Street
	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565

11 Either Party, from time to time, may specify in writing to the other Party a change of address to
12 which all notices and other communications shall be sent.

13 **9. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

14 This Consent Judgment may be executed in counterparts and by facsimile or pdf signature,
15 each of which shall be deemed an original, and all of which, when taken together, shall constitute
16 one and the same document. A facsimile or pdf signature shall be as valid as the original.

17 **10. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

18 Plaintiff and his attorneys agree to comply with the reporting form requirements referenced
19 in California Health & Safety Code section 25249.7(f).

20 **11. POST EXECUTION ACTIVITIES**

21 Plaintiff and Settling Defendant agree to support the entry of this agreement as a Consent
22 Judgment and obtain approval of the Consent Judgment by the Court in a timely manner. The
23 Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a noticed
24 motion is required to obtain judicial approval of this Consent Judgment, which Plaintiff shall draft
25 and file. If any third party objection to the noticed motion is filed, Plaintiff and the Settling
26 Defendant shall work together to file a reply and appear at any hearing before the Court. This
27 provision is a material component of the Consent Judgment and shall be treated as such in the event
28 of a breach.

1 **12. MODIFICATION**

2 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
3 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
4 of any party and entry of a modified Consent Judgment by the Court.

5 **13. AUTHORIZATION**

6 The undersigned are authorized to execute this Consent Judgment on behalf of their
7 respective Parties and have read, understand, and agree to all of the terms and conditions of this
8 Consent Judgment.


9
10 AGREED TO:

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12 _____
13 Plaintiff Laurence Vinocur

14 Date: November 20, 2013

AGREED TO:

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Evenflo Company, Inc.
AMY E. NEFF, ASSOCIATE GENERAL
COUNSEL

Date: November 21, 2013

EXHIBIT A

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I. Name of Settling Defendant (Mandatory) Evenflo Company, Inc.

II. Names of Releasees (Optional; May be Partial):

See Section 5.1.

III. Types of Covered Products Applicable to Settling Defendant (Check All That Match 60-Day Notice or Supplemental Notice Received)

Foam-cushioned pads for children and infants to lie on, such as rest mats

Upholstered furniture

Foam-filled mattresses, mattress toppers, pillows, cushions, travel beds

Car seats, strollers

Other (specify):

IV. Settling Defendant's Required Settlement Payments

Civil Penalties of \$84,000, as follows:

\$26,000 initial payment due on or before the Effective Date;

\$10,000 second payment due on or before January 15, 2014, of which \$5,000 may be waived pursuant to Section 4.1.4(i) and \$5,000 may be waived pursuant to Section 4.1.4(iii); and

\$48,000 third payment due on or before November 30, 2014, of which \$24,000 may be waived pursuant to Section 4.1.4(ii) and \$24,000 may be waived pursuant to Section 4.1.4(iv).

V. Payment to The Chanler Group for reimbursement of attorneys' fees and costs:

Fees and Costs for Settling Defendant: \$80,000.00.

1 VI. Person(s) to receive Notices pursuant to Section 8

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Santosh Narayan, Esq.
Name

Name

Counsel for Evenflo Company, Inc.
Title

Title

Address:

Address:

Tropio & Morlan
21700 Oxnard St., Suite 1700
Woodland Hills, CA 91367