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

11 ANTHONY E. HELD, PH.D., P.E.
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13 Plaintiff,
14 v.
15 SAFAVIEH INTL., LLC.; et al.
16 Defendants.

) Case No. RG 14729396
)
) Assigned for All Purposes to
) Judge George C. Hernandez, Jr.,
) Department 17
)
) **[PROPOSED] CONSENT JUDGMENT AS**
) **TO DEFENDANT SAFAVIEH INTL., LLC.**
)
)
) **(Health & Safety Code § 25249.6 et seq.**
) **Complaint Filed: June 16, 2014)**

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Anthony E. Held, Ph.D.,
4 P.E. ("Held" or "Plaintiff") and the defendant Safavieh Intl., LLC. ("Safavieh" or "Settling
5 Defendant") with Held and Safavieh 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 Defendant**

11 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 § 25249.6, *et seq.* ("Proposition 65").

14 **1.4 General Allegations**

15 1.4.1 Plaintiff alleges that Settling Defendant manufactured, imported, sold and/or
16 distributed for sale in California, upholstered ottomans with foam padding containing tris(1,3-
17 dichloro-2-propyl) phosphate ("TDCPP") and tris(2-chloroethyl) phosphate ("TCEP"), including
18 but not limited to, *Safavieh Furniture Mercer Modern Collection ottoman, Item Number:*
19 *MCR4608A*, without the requisite Proposition 65 health hazard warnings. TDCPP has been used in
20 consumer products as additive flame retardants since the 1960s. TDCPP and TCEP are additive
21 flame retardants used in both soft and rigid polyurethane foam, plastics and fabric backings.
22 TDCPP and TCEP shall hereinafter be referred to collectively as the "Listed Chemicals."

23 1.4.2 Pursuant to Proposition 65, on October 28, 2011, California identified and
24 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the "clear and
25 reasonable warning" requirements of Proposition 65 one year later on October 28, 2012. Cal. Code
26 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). Pursuant to
27 Proposition 65, on April 1, 1992, California identified and listed TCEP as a chemical known to
28 cause cancer. TCEP became subject to the "clear and reasonable warning" requirements of the Act

1 one year later on April 1, 1993. *Id.* Plaintiff alleges that the Listed Chemicals escape from foam
2 padding, leading to human exposures.

3 1.5 Product Description

4 The categories of products that are covered by this Consent Judgment as to the Settling
5 Defendant are identified on Exhibit A (hereinafter “Products”). Polyurethane foam that is supplied,
6 shaped or manufactured for use as a component of a product, such as upholstered furniture, is
7 specifically excluded from the definition of Products and shall not be identified by the Settling
8 Defendant on Exhibit A as a Product.

9 1.6 Notice of Violation

10 On December 13, 2013, Plaintiff served Safavieh, others, and certain requisite public
11 enforcement agencies with a “60-Day Notices of Violation” (“Notice”) that provided the recipients
12 with notice of alleged violations of Proposition 65 based on the alleged failure to warn customers,
13 consumers, and workers in California that the Products expose users to TDCPP and 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 Notices.

16 1.7 Complaint

17 On June 16, 2014, Plaintiff filed a Complaint in the Superior Court in and for the County of
18 Alameda against the Settling Defendant, other defendants and Does 1 through 150, *Anthony E.*
19 *Held, Ph.D., P.E., et al. v. Safavieh Intl., LLC, et al.*, Case No. RG 14729396, alleging violations of
20 Proposition 65, based in part on the alleged unwarned exposures to TDCPP and TCEP contained in
21 the Products (“Complaint”).

22 1.8 No Admission

23 The Settling Defendant denies the material factual and legal allegations contained in
24 Plaintiff’s Notice and Complaint and maintains that all products that they have manufactured,
25 imported, distributed, and/or sold in California, including the Products, have been and are in
26 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by
27 the Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall
28 compliance with this Consent Judgment constitute or be construed as an admission by the Settling

1 Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this section
2 shall not diminish or otherwise affect a Settling Defendant's obligations, responsibilities, and duties
3 under this Consent Judgment.

4 **1.9 Consent to Jurisdiction**

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

10 **2. DEFINITIONS**

11 **2.1 California Customers**

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

15 **2.2 Detectable**

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

21 **2.3 Effective Date**

22 "Effective Date" shall mean September 15, 2014.

23 **2.4 Private Label Covered Products**

24 "Private Label Covered Products" means Products that bear a brand or trademark owned or
25 licensed by a Retailer or affiliated entity that are sold or offered for sale by a Retailer in the State of
26 California.

1 **2.5 Reformulated Products**

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

4 **2.6 Reformulation Standard**

5 The “Reformulation Standard” shall mean containing no more than 25 ppm for each of
6 TDCPP and/or TCEP.

7 **2.7 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 the November 30, 2014, Settling Defendant shall not manufacture or
13 import for 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, the Settling Defendant shall not employ statements that will encourage a
21 vendor to delay compliance with the Reformulation Standard. The Settling Defendant shall
22 subsequently obtain written certifications, no later than September 15, 2014, from such vendors,
23 and any newly engaged vendors, that the Products manufactured by such vendors are in compliance
24 with the Reformulation Standard. Certifications shall be held by the Settling Defendant for at least
25 two years after their 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 30 days after the Effective Date, the Settling Defendant shall send a letter,
28 electronic or otherwise (“Notification Letter”) to: (1) each California Customer and/or Retailer

1 which it, after October 28, 2011, supplied the item for resale in California described as an exemplar
2 in the Notice the Settling Defendant received from Plaintiff (“Exemplar Product”); and (2) any
3 California Customer and/or Retailer that the Settling Defendant reasonably understands or believes
4 had any inventory for resale in California of Exemplar Products as of the relevant Notice’s dates.
5 The Notification Letter shall advise the recipient that the Exemplar Product “contains TDCPP
6 and/or TCEP, chemicals known to the State of California to cause cancer,” and request that the
7 recipient either: (a) label the Exemplar Products remaining in inventory for sale in California, or to
8 California Customers, pursuant to Section 3.5; or (b) return, at the Settling Defendant’s sole
9 expense, all units of the Exemplar Product held for sale in California, or to California Customers, to
10 the Settling Defendant or a party the Settling Defendant has otherwise designated. The Notification
11 Letter shall require a response from the recipient within 20 days confirming whether the Exemplar
12 Product will be labeled or returned. The Settling Defendant shall maintain records of all
13 correspondence or other communications generated pursuant to this Section for two years after the
14 Effective Date and shall 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, Settling Defendant’s inventory as of or
17 after the Effective Date, 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:

2
3 **WARNING:** This product contains TDCPP and
4 TCEP, flame retardant chemicals
5 known to the State of California to
6 cause cancer.¹

7 Attached as Exhibit B are template warnings deemed to be clear and reasonable for purposes
8 of this Consent Judgment, as follows: (a) a yellow hang tag measuring 3" x 5", with no less than 12
9 point font, with the warning language printed on each side of the hang tag, which shall be affixed
10 directly to the Product; (b) a yellow warning sign measuring 8.5" x. 11", with no less that 32 point
11 font, with the warning language printed on each side, which shall be affixed directly to the Product;
12 and (c) for Products sold at retail in a box or packaging, a yellow warning sticker measuring 3" x
13 3", with no less than 12 point font, which shall be affixed directly to the Product packaging.

13 3.5.2 Internet Website Warning

14 A warning shall be given in conjunction with the sale of the Products to California, or
15 California Customers, via the internet, which warning shall appear on one or more web pages
16 displayed to a purchaser during the checkout process. The following warning statement shall be
17 used and shall: (a) appear adjacent to or immediately following the display, description, or price of
18 the Product; (b) be accessible via a hyperlink that appears adjacent to or immediately following the
19 display, description, or price of the Product; or (c) appear as a pop-up box. The warning, hyperlink
20 and/or pop-up box text shall be the same type size or larger than the Product description text:

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24 ¹ Alternative warning language that meets the requirements of 27 CCR 25601 may also be
25 used if the Settling Defendant had begun to use it, prior to the Effective Date. A copy of said
26 alternative warning shall be provided to Plaintiff upon request. If the Plaintiff reasonably contends
27 that the alternative warning does not comply with 27 CCR § 25601, then the language must
28 thereafter be modified by the Settling Defendant to the Plaintiff's satisfaction. Also, the warning
language required by this Section may be modified into a hybrid warning statement, subject to
Plaintiff's approval, to the extent the Settling Defendant elects to warn for additional chemicals
listed under Proposition 65 in addition to the Listed Chemicals. The Parties agree that the
following hybrid warning language is unclear and unreasonable and shall not be used: (a) "cancer or
birth defects or other reproductive harm"; and (b) "cancer, birth defects or other reproductive
harm."

1 “Anthony E. Held, Ph.D., P.E., Client Trust Account” in the amount specified on Exhibit A.
2 Adams Nye and Becht, LLP shall provide The Chanler Group with written confirmation within five
3 business days of receipt of the checks. Within five business days following the date that this
4 Consent Judgment is approved by the Court, Adams Nye and Becht, LLP shall mail the checks to
5 the respective payee at the addresses listed in Section 4.5 below. Safavieh shall be liable for
6 payment of interest, at a rate of 10% simple interest, for all amounts due and owing under this
7 Section that are not received by the payee within five business days following the due date.

8 4.1.2 Second Civil Penalty. On or before September 30, 2014, the Settling
9 Defendant shall make a second civil penalty payment in the amount identified on the Settling
10 Defendant’s Exhibit A. The amount of the second penalty may be reduced according to any penalty
11 waiver the Settling Defendant is eligible for under Sections 4.1.4(i) and 4.1.4(iii), below.

12 4.1.3 Third Civil Penalty. On or before January 30, 2015, the Settling Defendant
13 shall make a third civil penalty payment in the amount identified on the Settling Defendant’s
14 Exhibit A. The amount of the third penalty may be reduced according to any penalty waiver the
15 Settling Defendant is eligible for under Sections 4.1.4(ii) and 4.1.4(iv), below.

16 4.1.4 Reductions to Civil Penalty Payment Amounts. The Settling Defendant may
17 reduce the amount of the civil penalty payments identified on the Settling Defendant’s Exhibit A by
18 providing Plaintiff with certification of certain efforts undertaken to reformulate their Products or
19 reduce exposures to Listed Chemicals in California. The options to provide a written certification
20 in lieu of making a portion of a Settling Defendant’s civil penalty payment constitute material terms
21 of this Consent Judgment, and with regard to such terms, time is of the essence.

22 4.1.4(i) **Partial Penalty Waiver for Accelerated Reformulation in**
23 **California.**

24 As shown on the Settling Defendant’s Exhibit A, a portion of the second civil penalty shall
25 be waived, to the extent that it has agreed that, as of August 15, 2014, and continuing into the
26 future, it shall only manufacture or import for distribution or sale to California Customers or cause
27 to be manufactured or imported for distribution or sale to California Customers, Reformulated
28 Products. An officer of the Settling Defendant that has exercised this election shall provide

1 Plaintiff with a written certification confirming compliance with such conditions, which
2 certification must be received by Plaintiff's counsel on or before September 15, 2014.

3 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation.**

4 If Safavieh so elects, a portion of the third civil penalty shall be waived, to the extent that it
5 has agreed that, as of November 15, 2014, and continuing into the future, it shall only manufacture
6 or import for distribution or sale in California or cause to be manufactured or imported for
7 distribution or sale in California, Reformulated Products which also do not contain tris(2,3-
8 dibromopropyl) phosphate ("TDBPP") in a detectable amount of more than 25 parts per million
9 ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject product,
10 when analyzed by a NVLAP accredited laboratory pursuant to EPA testing methodologies 3545 and
11 8270C, or equivalent methodologies utilized by federal or state agencies to determine the presence,
12 and measure the quantity, of TDBPP in a solid substance. An officer or other authorized
13 representative of a Safavieh that has exercised this election shall provide Held with a written
14 certification confirming compliance with such conditions, which certification must be received by
15 Held's counsel on or before February 28, 2015.

16 **4.1.4(iii) Partial Penalty Waiver for Withdrawal of Unreformulated**
17 **Exemplar Products from the California Market.**

18 As shown on the Settling Defendant's Exhibit A, a portion of the second civil penalty shall
19 be waived, if an officer of Settling Defendant provides Plaintiff with written certification, by
20 September 30, 2014, confirming that each individual or establishment in California to which it
21 supplied the Exemplar Product after October 28, 2011, has elected, pursuant to Section 3.3, to
22 return all Exemplar Products held for sale in California (or other products for which Defendant has
23 received test results from Plaintiff indicating the presence the Listed Chemicals).

24 **4.1.4(iv) Partial Penalty Waiver for Termination of Distribution to**
25 **California of Unreformulated Inventory.**

26 As shown on the Settling Defendant's Exhibit A, a portion of the third civil penalty shall be
27 waived, if an officer of the Settling Defendant provides Plaintiff with written certification, on or
28 before January 15, 2015, confirming that, as of October 15, 2014, it has and will continue to

1 distribute, offer for sale, or sell in California, or to California Customers, only Reformulated
2 Products.

3 4.2 Representations

4 Settling Defendant, and any other entity released by this Consent Judgment, understands
5 that the sales data and other information concerning its size, knowledge of TDCPP and TCEP, and
6 prior reformulation and/or warning efforts, it provided to Plaintiff was truthful to its knowledge and
7 a material factor upon which Plaintiff has relied to determine the amount of civil penalties assessed
8 pursuant to Health & Safety Code § 25249.7 in this Consent Judgment.

9 If, within nine months of the Effective Date, Plaintiff discovers and presents to the Settling
10 Defendant, evidence that prior to execution of this Consent Judgment the Product has been
11 distributed by the Settling Defendant in sales volumes materially different than those identified by
12 the Settling Defendant prior to execution of this Consent Judgment, then the Settling Defendant
13 may be liable for an additional penalty amount as well as additional attorney fees expended by
14 Plaintiff in the public interest. In the event Plaintiff believes there is evidence that the Product has
15 been distributed by the Settling Defendant in sales volumes materially different than those
16 identified by the Settling Defendant, Plaintiff shall provide the Settling Defendant with a written
17 demand for additional penalties and attorney fees under this Section. After service of such demand,
18 the Settling Defendant shall have 30 days to meet and confer regarding the demand and submit such
19 payment to Plaintiff in accordance with the method of payment of penalties identified in this
20 Section 4. Should this 30 day period pass without any such resolution between the Parties and
21 payment of such additional penalties and fees, Plaintiff shall be entitled to file a formal legal claim
22 including, but not limited to, a claim for damages for breach of this contract, and the prevailing
23 party shall be entitled to all reasonable attorney fees and costs relating to that action.

24 Safavieh further represents that in implementing the requirements set forth in Sections 3.1
25 and 3.2 of this Settlement Agreement, it will voluntarily employ commercial best efforts to achieve
26 reformulation of its Products and Additional Products on a nationwide basis and not employ
27 statements that will encourage a vendor to limit its compliance with the Reformulation Standard to
28 goods intended for sale to California Consumers.

1 **4.3 Stipulated Penalties for Certain Violations of the Reformulation**
2 **Standard.**

3 If Plaintiff provides notice and appropriate supporting information to the Settling Defendant
4 that levels of a Listed Chemical in excess of the Reformulation Standard have been detected in one
5 or more Products labeled or otherwise marked in an identifiable manner as manufactured or
6 imported after a deadline for meeting the Reformulation Standard has arisen for the Settling
7 Defendant under Sections 3.1 or 3.6 above, the Settling Defendant may elect to pay a stipulated
8 penalty to relieve any further potential liability under Proposition 65 or sanction under this Consent
9 Judgment as to Products sourced from the vendor in question.³ The stipulated penalty shall be
10 \$1,500 if the violation level is below 100 ppm and \$3,000 if the violation level is between 100 ppm
11 and 249 ppm, this being applicable for any amount in excess of the Reformulation Standards but
12 under 250 ppm.⁴ Plaintiff shall further be entitled to reimbursement of his associated expense in an
13 amount not to exceed \$5,000 regardless of the stipulated penalty level. The Settling Defendant
14 under this Section must provide notice and appropriate supporting information relating to the
15 purchase (e.g. vendor name and contact information including representative, purchase order,
16 certification (if any) received from vendor for the exemplar or subcategory of products), test results,
17 and a letter from a company representative or counsel attesting to the information provided, to
18 Plaintiff within 30 calendar days of receiving test results from Plaintiff's counsel. Any violation
19 levels at or above 250 ppm shall be subject to the full remedies provided pursuant to this Consent
20 Judgment and at law.

21 **4.4 Reimbursement of Fees and Costs**

22 The Parties acknowledge that Plaintiff and his counsel offered to resolve this dispute
23 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving
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25 ³ This Section shall not be applicable where the vendor in question had previously been
26 found by the Settling Defendant to have provided unreliable certifications as to meeting the
27 Reformulation Standard in its Products on more than one occasion. Notwithstanding the foregoing,
a stipulated penalty for a second exceedance by a Settling Defendant's vendor at a level between
100 and 249 ppm shall not be available after July 1, 2015.

28 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, respectively.

1 this fee reimbursement issue to be resolved after the material terms of the agreement had been
2 settled. Shortly after the other settlement terms had been finalized, the Settling Defendant
3 expressed a desire to resolve the fee and cost issue. The Settling Defendant agrees to pay Plaintiff
4 and his counsel under general contract principles and the private attorney general doctrine codified
5 at California Code of Civil Procedure section 1021.5 for all work performed through the mutual
6 execution of this agreement, including the fees and costs incurred as a result of investigating,
7 bringing this matter to the Settling Defendant's attention, negotiating a settlement in the public
8 interest, and seeking court approval of the same. The Settling Defendant agrees to pay Plaintiff and
9 his counsel the amount of fees and costs indicated on the Settling Defendant's Exhibit A. Safavieh
10 shall, within five days of the Effective Date, issue a check payable to "The Chanler Group" in the
11 amount of fees and costs indicated on Exhibit A to be held by Adams Nye and Becht, LLP for The
12 Chanler Group. Adams Nye and Becht, LLP shall provide The Chanler Group with written
13 confirmation within five days of receipt of the check. Adams Nye and Becht, LLP shall release the
14 check and shall deliver payment within five business days of the date which this Consent Judgment
15 is approved by the Court, to the address listed in Section 4.5.1(a) below.

16 **4.5 Payment Procedures**

17 **4.5.1 Issuance of Payments.**

18 (a) All payments owed to Plaintiff and his counsel, pursuant to Sections
19 4.1 and 4.2 shall be delivered to the following payment address:

20 The Chanler Group
21 Attn: Proposition 65 Controller
22 2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710

23 (b) All payments owed to OEHHA, pursuant to Section 4.1, shall be
24 delivered directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following
25 addresses, as appropriate:
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1 For United States Postal Service Delivery:

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 4.5.2 Proof of Payment to OEHHA. A copy of each check payable to OEHHA
14 shall be mailed, simultaneous with payment, to The Chanler Group at the address set forth
15 in Section 4.3.1(a) above, as proof of payment to OEHHA.

16 **5. CLAIMS COVERED AND RELEASED**

17 **5.1 Plaintiff's Release of Proposition 65 Claims**

18 Plaintiff, acting on his own behalf and in the public interest, releases the Settling Defendant,
19 its parents, subsidiaries, affiliated entities under common ownership, directors, officers, agents
20 employees, attorneys, and each entity to whom the Settling Defendant directly or indirectly
21 distribute or sell Products, including, but not limited, to downstream distributors, wholesalers,
22 customers, retailers, franchisees, cooperative members, and licensees (collectively, "Releasees"),
23 from all claims for violations of Proposition 65 through the Effective Date based on unwarned
24 exposures to the Listed Chemicals in the Products, as set forth in the Notices. Compliance with the
25 terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to
26 exposures to the Listed Chemicals from the Products, as set forth in the Notices. The Parties further
27 understand and agree that this Section 5.1 release shall not extend upstream to any entities, other
28 than the Settling Defendant, that manufactured the Products or any component parts thereof, or any
distributors or suppliers who sold the Products or any component parts thereof to the Settling
Defendant, except that entities upstream of the Settling Defendant that is a Retailer of a Private
Labeled Covered Product shall be released as to the Private Labeled Covered Products offered for
sale in California, or to California Customers, by the Retailer in question.

1 **5.2 Plaintiff's Individual Releases of Claims**

2 Plaintiff, in his individual capacity only and *not* in his representative capacity, provides a
3 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
4 actions, causes of action, obligations, costs, expenses, attorneys' fees, damages, losses, claims,
5 liabilities, and demands of Plaintiff of any nature, character, or kind, whether known or unknown,
6 suspected or unsuspected, limited to and arising out of alleged or actual exposures to TDCPP and/or
7 TCEP in the Products manufactured, imported, distributed, or sold by Settling Defendants prior to
8 the Effective Date. The Parties further understand and agree that this Section 5.2 release shall not
9 extend upstream to any entities that manufactured the Products or any component parts thereof, or
10 any distributors or suppliers who sold the Products or any component parts thereof to Settling
11 Defendant, except that entities upstream of the Settling Defendant that is a Retailer of a Private
12 Labeled Covered Product shall be released as to the Private Labeled Covered Products offered for
13 sale in California by the Retailer in question. Nothing in this Section affects Plaintiff's right to
14 commence or prosecute an action under Proposition 65 against a Releasee that does not involve a
15 Settling Defendant's Products.

16 **5.3 Settling Defendant's Release of Plaintiff**

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

23 **6. COURT APPROVAL**

24 This Consent Judgment is not effective until it is approved and entered by the Court and
25 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
26 after it has been fully executed by all Parties. If the Court does not approve the Consent Judgment,
27 the Parties shall meet and confer as to whether to modify the language or appeal the ruling. If the
28 Parties do not jointly agree on a course of action to take, then the case shall proceed in its normal

1 course on the Court's trial calendar. If the Court's approval is ultimately overturned by an appellate
2 court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment.
3 If the Parties do not jointly agree on a course of action to take, then the case shall proceed in its
4 normal course on the Court's trial calendar. In the event that this Consent Judgment is entered by
5 the Court and subsequently overturned by any appellate court or the motion to approve is not
6 ultimately granted, any monies that have been provided to Plaintiff or his counsel pursuant to
7 Section 3, above, shall be refunded within 15 days of the judgment or appellate decision becoming
8 final.

9 **7. SEVERABILITY**

10 If, subsequent to the Court's approval and entry of this Consent Judgment, any of the
11 provisions of this Consent Judgment are held by a court to be unenforceable, the validity of the
12 enforceable provisions remaining shall not be adversely affected.

13 **8. GOVERNING LAW**

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

23 **9. NOTICES**

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

To Plaintiff:

2 At the address shown on Exhibit A

Proposition 65 Coordinator
The Chanler Group
2560 Ninth Street
Parker Plaza, Suite 214
Berkeley, CA 94710-2565

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

8 **10. COUNTERPARTS, FACSIMILE AND PDF SIGNATURES**

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

12 **11. COMPLIANCE WITH HEALTH & SAFETY CODE SECTION 25249.7(f)**

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

15 **12. ADDITIONAL POST EXECUTION ACTIVITIES**

16 12.1 In addition to the Products, where the Settling Defendant has identified on Exhibit A
17 additional products that contain Listed Chemicals and that are sold or offered for sale by it in
18 California, or to California Customers, ("Additional Products"), then by no later than October 15,
19 2014, the Settling Defendant shall provide Plaintiffs with additional information or representations
20 necessary to enable them to issue a 60-Day Notice of Violation and valid Certificate of Merit
21 therefore, pursuant to Health & Safety Code section 25249.7, that includes the Additional Products.
22 Polyurethane foam that is supplied, shaped or manufactured for use as a component of a product,
23 such as upholstered furniture, is specifically excluded from the definition of Additional Products
24 and shall not be identified by the Settling Defendant on Exhibit A as an Additional Product.
25 Settling Defendant shall not include a product, as an Additional Product, that is the subject of an
26 existing 60-day notice issued by Plaintiff or any other private enforcer at the time of execution.
27 After receipt of the required information, Plaintiff agrees to issue a supplemental 60-day notice in
28 compliance with all statutory and regulatory requirements for the Additional Products. Plaintiff

1 will, and in no event later than October 1, 2015, prepare and file an amendment to this Consent
2 Judgment to incorporate the Additional Products within the defined term "Products" and the
3 Additional Products shall be subject to all injunctive relief requirements of Section 3. The
4 "Effective Date" as to the Additional Products shall be the date upon which the amendment to the
5 Consent Judgment is approved by the Court. Plaintiff shall also submit an application to the Court
6 for entry of such amendment of this Consent Judgment. The Settling Defendant shall, at the time it
7 tenders the additional information or representations regarding the Additional Products to Plaintiff,
8 pay an amount not to exceed \$8,750 as stipulated penalties and attorneys' fees and costs incurred by
9 Plaintiff in issuing the new notice and engaging in other reasonably related activities, as awarded by
10 the Court upon Plaintiff's application. Such payment shall be made to "The Chanler Group" and
11 delivered as per Section 4.5.1(a) above.

12 12.2 Plaintiff and Settling Defendant agree to support the entry of this agreement as a
13 Consent Judgment and obtain approval of the Consent Judgment by the Court in a timely manner.
14 The Parties acknowledge that, pursuant to California Health & Safety Code section 25249.7, a
15 noticed motion is required to obtain judicial approval of this Consent Judgment, which Plaintiff
16 shall draft and file. If any third party objection to the noticed motion is filed, Plaintiff and the
17 Settling Defendant shall work together to file a reply and appear at any hearing before the Court.
18 This provision is a material component of the Consent Judgment and shall be treated as such in the
19 event of a breach.

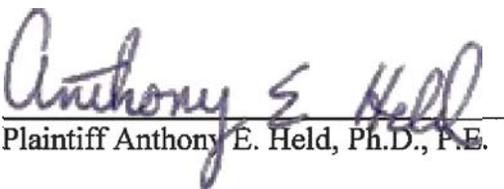
20 **13. MODIFICATION**

21 This Consent Judgment may be modified only: (1) by written agreement of the Parties and
22 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion
23 of any party and entry of a modified Consent Judgment by the Court.
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1 **14. AUTHORIZATION**

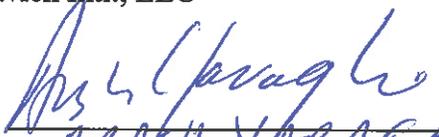
2 The undersigned are authorized to execute this Consent Judgment on behalf of their
3 respective Parties and have read, understood, and agree to all of the terms and conditions of this
4 Consent Judgment.

7 AGREED TO:

8
9 
10 Plaintiff Anthony E. Held, Ph.D., P.E.

12 Date: September 10, 2014

7 AGREED TO:
8 Settling Defendant:
9 Safavieh Intl., LLC

10 By: 
11 Name: ARASH YARAGHI
12 It's: Member

13 Date: September 9th, 2014

28

1 EXHIBIT A

2

3 I. Name of Settling Defendant (Mandatory): Safavieh, Inc.

4 II. Names of Releasees (Optional; May be Partial): Yaraghi, LLC

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

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

8 Upholstered furniture

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

10 Car seats, strollers

11 Other (specify):

12 IV. Types of Additional Products the Settling Defendant Elects to Address (if any):

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14

15 V. Settling Defendant's Required Settlement Payments

16 A. Penalties for Settling Defendant, \$40,000, as follows:

17 \$10,000 initial payment due on or before the Effective Date;

18 \$18,000 second payment due on or before September 30, 2014, of which \$10,000
19 may be waived pursuant to Section 4.1.4(i) and \$8,000 may be waived pursuant to
Section 4.1.4(iii); and

20 \$12,000 third payment due on or before January 30, 2015, of which \$8,000 may be
21 waived pursuant to Section 4.1.4(ii) and \$4,000 may be waived pursuant to Section
4.1.4(iv).

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

24 A. Fees and Costs for Settling Defendant are: \$31,500.

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VII. Person(s) to receive Notices pursuant to Section 9

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Barbara Adams
Name

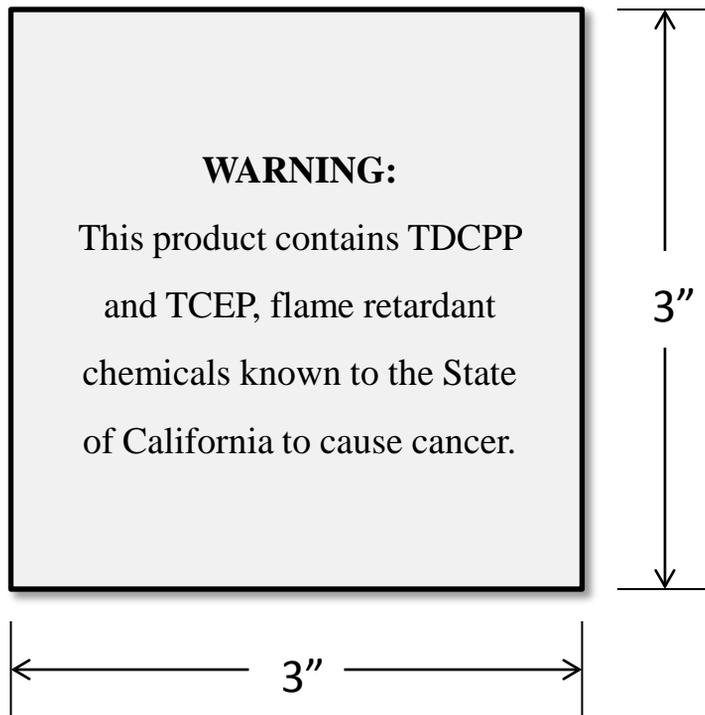
Attorney for Defendant
Title

Address

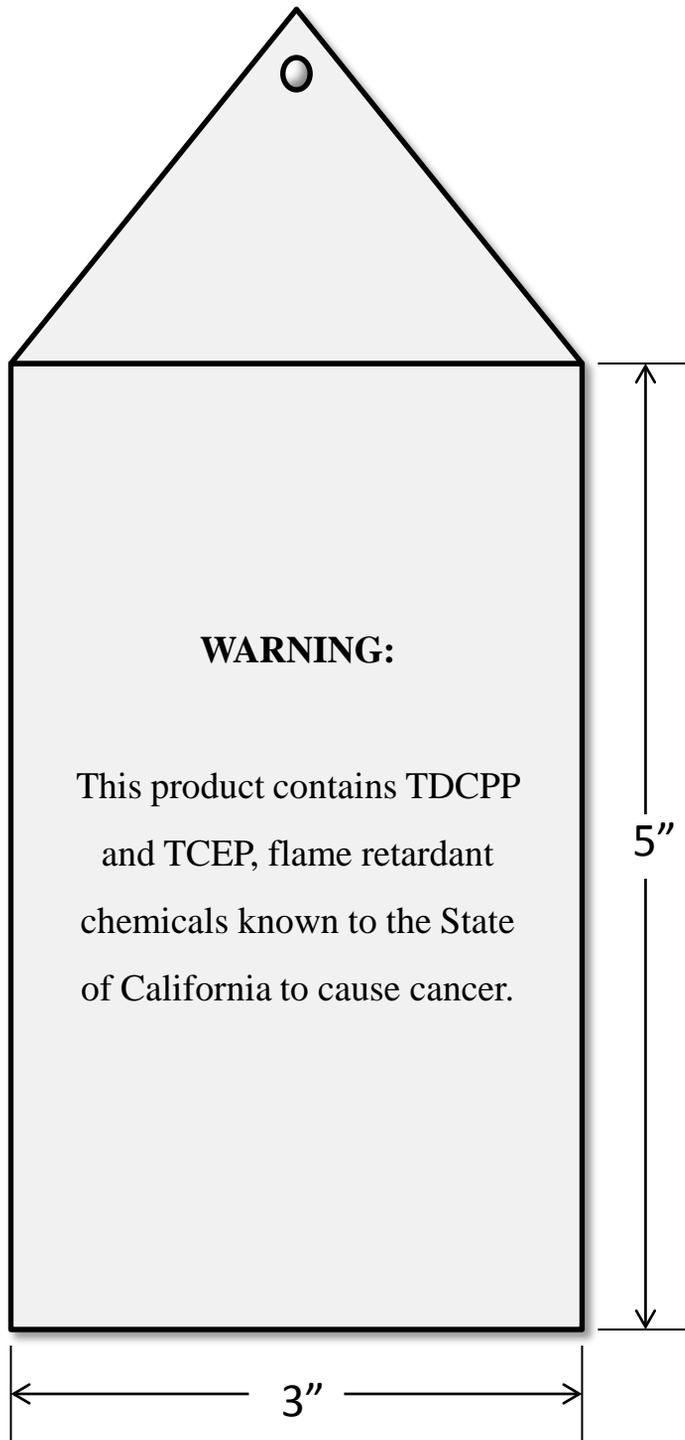
Adams Nye and Becht, LLP
222 Kearny St., Seventh Floor
San Francisco, CA 94108-4521

EXHIBIT B
(ILLUSTRATIVE WARNINGS)

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INSTRUCTIONS: Minimum 12 pt. font. "WARNING:" text must be bold.



INSTRUCTIONS: Print warning on each side of hang tag.
Minimum 12 pt. font. “WARNING:” text must be bold.

WARNING:

This product contains TDCPP and TCPEP, flame
8.5"

retardant chemicals known to the State of
California to cause cancer.



INSTRUCTIONS: Minimum 32 pt. Font. "WARNING:" text must be bold and underlined.