

1 Brian Johnson, State Bar No. 235965
2 Josh Voorhees, State Bar No. 241436
3 THE CHANLER GROUP
4 2560 Ninth Street
5 Parker Plaza, Suite 214
6 Berkeley, CA 94710-2565
7 Tel.: (510) 848-8880 Fax: (510) 848-8118

5 Attorneys for Plaintiff
6 PETER ENGLANDER

ENDORSED
FILED
ALAMEDA COUNTY

SEP 16 2014

CLERK OF THE SUPERIOR COURT
By YOLANDA ESTRADA Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

11 PETER ENGLANDER,
12 Plaintiff,
13 v.
14 KINFINE U.S.A., INC., *et al.*,
15 Defendants.

Case No. RG13672249

~~PROPOSED~~ JUDGMENT PURSUANT
TO TERMS OF PROPOSITION 65
SETTLEMENT AND CONSENT
JUDGMENT

Date: September 16, 2014
Time: 2:30 p.m.
Dept.: 17
Judge: Hon. George C. Hernandez, Jr.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Plaintiff Peter Englander and defendant Kinfine U.S.A., Inc. and Target Corporation, having agreed through their respective counsel that Judgment be entered pursuant to the terms of their settlement agreement in the form of a Consent Judgment, and following this Court's issuance of an Order approving the Proposition 65 settlement and Consent Judgment,

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that, pursuant to Health and Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.6, judgment is hereby entered in accordance with the terms of the Consent Judgment attached hereto as Exhibit 1. By stipulation of the parties, the Court will retain jurisdiction to enforce the settlement pursuant to Code of Civil Procedure section 664.6.

IT IS SO ORDERED.

Dated: SEP 16 2014

GEORGE C. HERNANDEZ, JR.

JUDGE OF THE SUPERIOR COURT

EXHIBIT 1

1 Mark N. Todzo, State Bar No. 168389
2 Joseph Mann, State Bar No. 207968
3 503 Divisadero Street
San Francisco, CA 94117
4 Tel.: (415) 913-7800 Fax: (415) 759-4112

5 Rick Franco, State Bar No. 170970
6 Center for Environmental Health
2201 Broadway, Suite 302
Oakland, California 94612
7 Tel.: (510) 655-3900 Fax: (510) 655-9100

8 Attorneys for Plaintiff
9 CENTER FOR ENVIRONMENTAL HEALTH

10 Brian C. Johnson, State Bar No. 235965
11 Josh Voorhees, State Bar No. 241436
12 THE CHANLER GROUP
13 2560 Ninth Street, Parker Plaza, Suite 214
Berkeley, CA 94710-2565
14 Tel.: (510) 848-8880 Fax: (510) 848-8118

15 Attorneys for Plaintiff
16 PETER ENGLANDER

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

19 CENTER FOR ENVIRONMENTAL
20 HEALTH, a non-profit corporation,

21 Plaintiff,

22 v.

23 A BABY, INC., et al.,

24 Defendants.

25 PETER ENGLANDER,

26 Plaintiff,

27 v.

28 KINFINE U.S.A. INC., et al.,

Defendants.

For Entry in Case Nos. RG13667688 and
RG13672249

*Assigned for All Purposes to the Honorable
George Hernandez, Jr., Department 17*

**[PROPOSED] CONSENT JUDGMENT
AS TO DEFENDANT KINFINE U.S.A.
INC.**

1 **1. Introduction**

2 1.1. This Consent Judgment is entered into by Plaintiffs Center for Environmental
3 Health (“CEH”), a non-profit corporation, and Peter Englander (“Englander”), an individual, and
4 Defendant Kinfine U.S.A. Inc. (“Defendant”) to settle claims asserted by CEH and Englander
5 against Defendant as set forth in their respective complaints entitled *Center for Environmental*
6 *Health v. A Baby, Inc., et al.* (Alameda County Superior Court Case No. RG13667688), and
7 *Peter Englander v. Kinfine U.S.A. Inc.* (Alameda County Superior Court Case No. RG13672249)
8 (the “Complaints”), and as to Covered Products (as defined in Section 2.2 below) supplied by
9 Kinfine to certain Retailers at issue in *Englander v. Ashley Furniture Industries, Inc., et al.*
10 (Alameda County Superior Court Case No. RG13672407), *Englander v. Kohl’s Corporation, et*
11 *al.* (Alameda County Superior Court Case No. RG13673609), *Englander v. Kirkland’s, Inc.*
12 (Alameda County Superior Court Case No. RG13673606), and *Englander v. Acme Furniture*
13 *Industry, Inc.* (Alameda County Superior Court Case No. RG13673167) (collectively, with the
14 Complaints, the “Actions”). The *Ashley Furniture* matter, the *Kohl’s* matter, the *Kirkland’s*
15 matter, and the *Acme Furniture* matter are referred to collectively as the “Retailer Actions.”
16 CEH, Englander, and Defendant are each referred to individually as a “Party” and collectively as
17 the “Parties.”

18 1.2. On January 15, 2013, CEH served a “Notice of Violation” of the California Safe
19 Drinking Water and Toxic Enforcement Act of 1986 (“Proposition 65”) (the “CEH Notice”) to
20 Defendant, the California Attorney General, the district attorneys of every county in the State of
21 California, and the city attorneys for every city in the State of California with a population
22 greater than 750,000. The CEH Notice alleges violations of Proposition 65 with respect to the
23 presence of tris(1,3-dichloro-2-propyl)phosphate (“TDCPP”) in foam-cushioned upholstered
24 furniture manufactured, distributed, and/or sold by Defendant.

25 1.3. Between January 4, 2013, and April 3, 2013, Englander served six separate 60-
26 Day Notices of Violation of Proposition 65 (the “Englander Notices”) to Defendant, certain
27 Retailers in California to whom Defendant supplies Covered Products and/or Private Label

28

1 Covered Products, the California Attorney General, the district attorneys of every county in the
2 State of California, and the city attorneys for every city in State of California with a population
3 greater than 750,000. The Englander Notices allege violations of Proposition 65 with respect to
4 the presence of TDCPP, and tris(2-chloroethyl)phosphate (“TCEP”) in foam-cushioned
5 upholstered furniture, including ottomans and children’s chairs, and di(2-ethylhexyl)phthalate
6 (“DEHP”) in the vinyl upholstery of furniture, including ottomans, that are manufactured, sold
7 and/or distributed for sale in California without a warning by Defendant and its Retailers. The
8 CEH Notice and Englander Notices are referred to collectively hereinafter as the “Notices.” To
9 the best of the Parties knowledge, no public enforcer has commenced and is diligently
10 prosecuting the violations alleged in the Notices.

11 1.4. Defendant is a corporation that employs ten (10) or more persons and that
12 manufactures, distributes, and/or sells Covered Products (as defined herein) in the State of
13 California.

14 1.5. For purposes of this Consent Judgment only, the Parties stipulate that: (i) this
15 Court has jurisdiction over the allegations of violations contained in the Notices and Complaints
16 and personal jurisdiction over Defendant as to the acts alleged in the Complaints; (ii) venue is
17 proper in Alameda County; and (iii) this Court has jurisdiction to enter this Consent Judgment as
18 a full and final resolution of all claims which were or could have been raised in the Complaints
19 based on the facts alleged in the Notices and Complaints with respect to Covered Products
20 manufactured, distributed, and/or sold by Defendant.

21 1.6. The Parties enter into this Consent Judgment as a full and final settlement of all
22 claims that were or which could have been raised in the Complaints arising out of the facts or
23 conduct related to Defendant alleged therein. By execution of this Consent Judgment and
24 agreeing to comply with its terms, the Parties do not admit any fact, conclusion of law, or
25 violation of law, nor shall compliance with the Consent Judgment constitute or be construed as
26 an admission by the Parties of any fact, conclusion of law, or violation of law. Defendant denies
27 the material, factual, and legal allegations in the Notices and Complaints and expressly denies
28

1 any wrongdoing whatsoever. Except as specifically provided herein, nothing in this Consent
2 Judgment shall prejudice, waive, or impair any right, remedy, argument, or defense any Party
3 may have in this or any other pending or future legal proceedings. This Consent Judgment is the
4 product of negotiation and compromise and is accepted by the Parties solely for purposes of
5 settling, compromising, and resolving issues disputed in these Actions. To the best of the Parties
6 knowledge no public enforcer has commenced and is diligently prosecuting the alleged
7 violations that are the subject of the Notices.

8 **2. Definitions**

9 2.1. "Chemical Flame Retardant" means any halogenated or phosphorous-based
10 chemical compound used for the purpose of resisting or retarding the spread of fire. "Chemical
11 Flame Retardant" does not include any chemical that has been rated as a Benchmark 4 chemical
12 pursuant to Clean Production Action's GreenScreen ([http://www.cleanproduction.org/
13 Green.Greenscreen.php](http://www.cleanproduction.org/Green.Greenscreen.php)).

14 2.2. "Covered Products" means foam-cushioned upholstered furniture manufactured,
15 distributed, and/or sold by Defendant in California, including, but not exclusively, Private Label
16 Covered Products.

17 2.3. "Effective Date" means the date on which the Court enters this Consent
18 Judgment.

19 2.4. "Listed Chemical Flame Retardants" means Tris(1,3-dichloro-2-propyl)
20 phosphate ("TDCPP"), Tris(2-chloroethyl) phosphate ("TCEP"), and Tris(2,3-dibromopropyl)
21 phosphate ("TDBPP").

22 2.5. "Private Label Covered Products" means Covered Products imported or
23 manufactured by Kinfine that bear a brand or trademark owned or licensed by a Retailer or
24 affiliated entity that are sold or offered for sale by a Retailer in the State of California.

25 2.6. "Reformulated Products" are Covered Products that contain no more than 25
26 parts per million ("ppm") (the equivalent of 0.0025%) each of TDCPP, TCEP, and/or TDBPP,
27 when analyzed by an accredited laboratory pursuant to EPA testing methodologies 3545 and
28

1 8270C, or equivalent methodologies utilized by federal or state agencies to determine the
2 presence or absence of, or to measure the amount of, TDCPP, TCEP, or TDBPP in a solid
3 substance, and a maximum concentration of 1,000 ppm DEHP content in any accessible
4 component (i.e., any component that may be handled during reasonably foreseeable use) when
5 tested pursuant to EPA testing methodologies 3580A and 8270C or equivalent methodologies
6 utilized by state and federal agencies to measure DEHP content in a solid substance.¹

7 2.7. "Retailer" means any individual or entity that offers a Product for sale to
8 consumers in California.

9 2.8. "TB 117-2013" means the Technical Bulletin 117-2013, entitled "Requirements,
10 Test Procedures and Apparatus for Testing the Smolder Resistance of Materials Used in
11 Upholstered Furniture," released for review and public comment on February 8, 2013 (re-
12 released on August 19, 2013) by the California Bureau of Electronic and Appliance Repair,
13 Home Furnishings and Thermal Insulation.

14 2.9. "TB 117-2013 Effective Date" means the date on which filling materials and
15 cover fabrics in upholstered furniture are required to meet the fire retardant requirements in TB
16 117-2013 pursuant to Section 1374 of Article 2 of Title 4 of the California Code of Regulations

17 2.10. "Treated" means the addition or application of any Chemical Flame Retardant to
18 any polyurethane foam, cushioning, or padding used as filling material in any Covered Product.

19 2.11. "Untreated Foam" means polyurethane foam that has not been Treated with any
20 Chemical Flame Retardant.

21 **3. Injunctive Relief**

22 3.1. **Reformulation of Covered Products.** Defendant will comply with the following
23 requirements to reformulate the Covered Products to eliminate exposures to TDCPP and other
24 Listed Chemical Flame Retardants arising from the use of the Covered Products:

25
26
27 ¹ As the Notices contain allegations regarding exposures to DEHP, the term "Reformulated Products"
28 further requires that the Products identified on Notices alleging exposures to DEHP shall contain no more
1,000 ppm each of DEHP, BBP, and DBP.

1 3.1.1. **Proposition 65-Listed Chemical Flame Retardants.** Defendant
2 represents that, upon receiving service of the Notices, it undertook efforts to reduce or remove
3 TDCPP from the Products, and that by May 2013, it achieved a TDCPP-free Product
4 formulation. Defendant further represents and commits that, as of the Effective Date, Defendant
5 shall not manufacture, or distribute, sell, or offer for sale in California any Covered Product that
6 has a Manufacture Date that is on or later than the Effective Date which has been intentionally
7 Treated with a Listed Chemical Flame Retardant or contains more than 25 parts per million
8 (“ppm”) (the equivalent of 0.0025%) each of TDCPP, TCEP, and/or TDBPP, when analyzed by
9 an accredited laboratory pursuant to EPA testing methodologies 3545 and 8270C, or equivalent
10 methodologies utilized by federal or state agencies to determine the presence or absence of, or to
11 measure the amount of, TDCPP, TCEP, or TDBPP in a solid substance.

12 3.1.2. **Warnings for Products in Inventory.** Any Covered Products
13 manufactured prior to the Effective Date in which the polyurethane foam has been Treated with
14 TDCPP that are distributed, sold, or offered for sale by Defendant in California after the
15 Effective Date shall be accompanied by a Clear and Reasonable Warning that complies with
16 Section 3.1.3.

17 3.1.3. **Proposition 65 Warnings.** A Clear and Reasonable Warning under this
18 Consent Judgment shall state:

19 **WARNING:** This product contains tris(1,3-dichloro-2-propyl)
20 phosphate (TDCPP), a chemical known to the State of
21 California to cause cancer.

22 A Clear and Reasonable Warning shall not be preceded by, surrounded by, or include any
23 additional words or phrases that contradict, obfuscate, or otherwise undermine the warning. The
24 warning statement shall be prominently displayed on the Covered Product or the packaging of
25 the Covered Product with such conspicuousness, as compared with other words, statements, or
26 designs as to render it likely to be read and understood by an ordinary individual prior to sale.
27 Any warning displayed on the bottom of an unpackaged Covered Product offered for sale to
28 California consumers shall not be considered a Clear and Reasonable Warning for purposes of

1 this Section. For internet, catalog, or any other sale where the consumer is not physically present
2 and cannot see a warning displayed on the Covered Product or the packaging of the Covered
3 Product prior to purchase or payment, the warning statement shall be displayed in such a manner
4 that it is likely to be read and understood prior to the authorization of or actual payment.

5 **3.1.4. Warnings for Products in the Stream of Commerce.** For any Covered
6 Product that Defendant sold to a retailer after October 31, 2011 (a) in which the polyurethane
7 foam has been Treated with TDCPP, and (b) for which Defendant knows or has reason to believe
8 that (i) the retailer is holding such Covered Product in inventory for sale in California, and (ii) a
9 Proposition 65 warning is not already affixed to the Covered Product or is otherwise being
10 provided by the retailer, within 15 days following the Effective Date Defendant shall either send
11 to the retailer warning materials that comply with Section 3.1.3 for such Covered Products or
12 direct the retailer to discontinue sale of the Covered Product in California.

13 **4. Penalties and Payments**

14 **4.1. Payments to CEH.** Defendant shall make an initial payment to CEH in the total
15 sum of forty thousand dollars (\$40,000), which shall be allocated as follows:

16 4.1.1. \$4,400 shall constitute a penalty pursuant to Cal. Health & Safety Code §
17 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health & Safety
18 Code § 25249.12.

19 4.1.2. \$6,000 shall constitute a payment in lieu of civil penalty pursuant to Cal.
20 Health & Safety Code § 25249.7(b) and 11 Cal. Code Regs § 3203(b). CEH will use such funds
21 to continue its work of educating and protecting the public from exposures to toxic chemicals,
22 including Chemical Flame Retardants. CEH may also use a portion of such funds to monitor
23 compliance with this Consent Judgment and to purchase and test Defendant's products to
24 confirm compliance. In addition, as part of its Community Environmental Action and Justice
25 Fund, CEH will use four percent (4%) of such funds to award grants to grassroots environmental
26 justice groups working to educate and protect the public from exposures to toxic chemicals. The
27
28

1 method of selection of such groups can be found at the CEH website at
2 www.ceh.org/justicefund.

3 4.1.3. \$29,600 shall constitute reimbursement of CEH's reasonable attorneys'
4 fees and costs.

5 4.1.4. The payment required under this Section shall be made in three separate
6 checks. All of the payments shall be sent within 10 days following the Effective Date. The
7 payments required pursuant to Section 4.1.1 and 4.1.2 shall each be made payable to CEH and
8 mailed to CEH at the address set forth in Section 9 below. The payment required pursuant to
9 Section 4.1.3 shall be made payable to Lexington Law Group and mailed to Lexington Law
10 Group at the address set forth in Section 9 below.

11 4.1.5. **Additional Payment.** In the event that Defendant does not certify
12 compliance with Section 5.2, Defendant shall make an additional payment of \$15,000 to CEH 30
13 days following the TB 117-2013 Effective Date. This additional payment shall be allocated as
14 follows:

15 4.1.5.1. \$5,000 shall constitute a penalty pursuant to Cal. Health &
16 Safety Code § 25249.7(b), such money to be apportioned by CEH in accordance with Cal. Health
17 & Safety Code § 25249.12.

18 4.1.5.2. \$10,000 shall constitute a payment in lieu of civil penalty
19 pursuant to Cal. Health & Safety Code § 25249.7(b) and 11 Cal. Code Regs § 3203(b). CEH
20 will use such funds as set forth in Section 4.1.2.

21 4.2. **Payments to Englander.** Defendant shall pay to Englander the total sum of one-
22 hundred twenty thousand (\$120,000), which shall be allocated as follows:

23 4.2.1. \$25,000 shall constitute a penalty pursuant to Cal. Health & Safety Code §
24 25249.7(b), such money to be apportioned by Englander in accordance with Cal. Health &
25 Safety Code § 25249.12. The total penalty payment includes \$10,000 for civil penalties
26 attributable to Kinfine's sales of Covered Products and Private Label Covered Products through
27 Target Corporation at issue in the instant action, The TJX Companies, Inc.'s sale of Covered

28

1 Products in the *Ashley Furniture* matter, Case No. RG13672407, as well as civil penalty
2 payments for sales by Retailers of Private Label Covered Products at issue in each of the Retailer
3 Actions, as follows:

4 (a) \$5,000 for Private Label Covered Products manufactured by
5 Kinfine and sold by Kohl's Corporation in California at issue in the Kohl's matter, Case No.
6 RG13673609;

7 (b) \$5,000 for Private Label Covered Products manufactured by
8 Kinfine and sold by Kirkland's, Inc. in California at issue in the Kirkland's matter, Case No.
9 Case No. RG13673606; and

10 (c) \$5,000 for Private Label Covered Products manufactured by
11 Kinfine and sold by Acme Furniture Industry, Inc. in California at issue in the Acme Furniture
12 matter, Case No. RG13673167.

13 4.2.2. \$95,000 shall constitute reimbursement of Englander's reasonable
14 attorneys' fees and costs. The total fee and cost reimbursement includes \$35,000 for fees
15 incurred by Englander in the instant action, as well as fees and costs incurred by Plaintiff in each
16 of the Retailer Actions as follows:

17 (a) \$20,000 for the fees and costs incurred in the litigation and other
18 enforcement-related activity undertaken by Plaintiff and Plaintiff's counsel in the Kohl's matter,
19 Case No. RG13673609;

20 (b) \$20,000 for the fees and costs incurred in the litigation and other
21 enforcement-related activity undertaken by Plaintiff and Plaintiff's counsel in the Kirkland's,
22 Inc. matter, Case No. RG13673606; and

23 (c) \$20,000 for the fees and costs incurred in the litigation and other
24 enforcement-related activity undertaken by Plaintiff and Plaintiff's counsel in the Acme
25 Furniture matter, Case No. RG13673167.

26 4.2.3. **Additional Payment.** In the event that Defendant does not certify
27 compliance with Section 5.1, Defendant shall make an additional civil penalty payment of

28

1 \$20,000 to Englander within 10 days of the Effective Date. This additional civil penalty
2 payment shall be allocated in accordance with Cal. Health & Safety Code § 25249.12.

3 **5. Optional Penalty Reduction Credits and Waivers**

4 5.1. **Accelerated Reformulation Waiver -- TDCPP.** The additional payment to
5 Englander set forth in Section 4.2.3 in the amount of \$20,000 shall be waived, if Defendant
6 agrees that, as of January 31, 2014, and continuing thereafter, Defendant will only manufacture
7 or import for sale in California, Reformulated Products as defined in Section 2.6 above. To
8 qualify for this waiver of additional payment to Englander, an officer of Defendant's
9 organization must provide Englander with a written certification confirming timely compliance
10 with the above reformulation standards no later than the Effective Date. The option to certify
11 early reformulation in lieu of making an additional payment to Englander constitutes a material
12 term of this Consent Judgment, and with regard to such term, time is of the essence.

13 5.2. **Additional Reformulation Waiver – Use of Untreated Foam.** The additional
14 payment to CEH set forth in Section 4.1.5 in the amount of \$15,000 shall be waived, if
15 Defendant agrees that, as of the TB117-2013 Effective Date, Defendant will not manufacture for
16 sale in California any Covered Product that has been Treated with any Chemical Flame
17 Retardant. To qualify for this waiver of additional payment to CEH, Defendant must provide
18 written certification to CEH of its use of only Untreated Foam within 30 days following the TB
19 117-2013 Effective Date.

20 **6. Enforcement of Consent Judgment**

21 6.1. CEH and/or Englander may, by motion or application for an order to show cause
22 before the Superior Court of Alameda County, enforce the terms and conditions contained in this
23 Consent Judgment. Prior to bringing any motion or application to enforce the requirements of
24 Sections 3 or 5 above, CEH and/or Englander shall provide Defendant with a Notice of Violation
25 and a copy of any test results which purportedly support CEH's and/or Englander's Notice of
26 Violation. The Parties shall then meet and confer regarding the basis for CEH's and/or
27 Englander's anticipated motion or application in an attempt to resolve it informally, including
28

1 providing Defendant a reasonable opportunity of at least thirty (30) days to cure any alleged
2 violation. Should such attempts at informal resolution fail, CEH and/or Englander may file
3 its/his enforcement motion or application. The prevailing Party on any motion to enforce this
4 Consent Judgment shall be entitled to its/his reasonable attorney's fees and costs incurred as a
5 result of such motion or application. This Consent Judgment may only be enforced by the
6 Parties.

7 **7. Modification of Consent Judgment**

8 7.1. This Consent Judgment may only be modified by a written agreement of the
9 Parties, or upon motion brought by CEH, Englander, or Defendant, as provided by law, and the
10 subsequent entry of a modified judgment by the Court thereon.

11 **8. Claims Covered and Released**

12 8.1. This Consent Judgment is a full, final, and binding resolution between CEH and
13 Englander acting in the public interest, and Defendant and Defendant's parents, officers,
14 directors, shareholders, divisions, subdivisions, subsidiaries, partners, affiliated companies and
15 its successors and assigns ("Defendant Releasees") and all entities to whom it distributes or sells
16 Covered Products including, but not limited to, distributors, wholesalers, customers, retailers,
17 franchisees, cooperative members, and licensees ("Downstream Defendant Releasees") of all
18 claims alleged in the Complaints and in the Actions arising from any violation of Proposition 65
19 that have been or could have been asserted in the public interest against Defendant, Defendant
20 Releasees, and/or Downstream Defendant Releasees, regarding the failure to warn about
21 exposures to TDCPP, TCEP, and/or DEHP in the Covered Products manufactured, distributed, or
22 sold by Defendant prior to the Effective Date, as alleged in the Notices.

23 8.2. CEH and Englander, for themselves, release, waive, and forever discharge any
24 and all claims alleged in the in the Actions, or either complaint filed therein, against Defendant,
25 Defendant Releasees, and Downstream Defendant Releasees arising from any violation of
26 Proposition 65 that have been or could have been asserted regarding the failure to warn about
27 exposures to TDCPP, TCEP, TDBPP, and/or DEHP in connection with Covered Products

28

1 manufactured, distributed, or sold by Defendant prior to the Effective Date, as alleged in the
2 Notices.

3 8.3. Compliance with the terms of this Consent Judgment by Defendant and
4 Defendant Releasees shall constitute compliance with Proposition 65 with respect to any alleged
5 failure to warn about TDCPP, TCEP, and/or DEHP in Covered Products manufactured,
6 distributed, or sold by Defendant and Defendant Releasees after the Effective Date.

7 8.4. Defendant, on its own behalf, and on behalf of its past and current agents,
8 representatives, attorneys, successors, and assignees, hereby waives any and all claims against
9 CEH and Englander and their attorneys and other representatives, for any and all actions taken or
10 statements made by CEH and Englander and their attorneys and other representatives, whether in
11 the course of investigating claims, otherwise seeking to enforce Proposition 65 against it in the
12 Actions, or with respect to the Covered Products.

13 8.5. Upon entry of this Consent Judgment by the Court, Englander shall file a request
14 for dismissal of the complaints in each of the Retailer Actions.

15 **9. Provision of Notice**

16 9.1. When any Party is entitled to receive any notice under this Consent Judgment, the
17 notice shall be sent by first class and electronic mail as follows:

18 9.1.1. **Notice to Defendant.** The persons for Defendant to receive notices
19 pursuant to this Consent Judgment shall be:

20 Len Gao
21 Kinfine U.S.A., Inc.
22 13824 Yorba Avenue
Chino, California 91710

23 With a copy to:

24 Jeffrey B. Margulies
25 Fulbright & Jaworski LLP
555 South Flower Street, 41st Floor
Los Angeles, CA 90071

26 9.1.2 **Notice to Plaintiffs.** The persons for CEH and Englander to receive
27 notices pursuant to this Consent Judgment shall be:

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

9.1.2(a). For CEH:

Rick Franco
Center for Environmental Health
2201 Broadway, Suite 302
Oakland, California 94612
rick@ceh.org

with a copy to:

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

9.1.2(b). For Englander:

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

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

10. Court Approval

10.1. This Consent Judgment shall become effective on the Effective Date, provided however, that CEH and Englander shall cooperate on the preparation and filing of a Motion for Approval of this Consent Judgment, and Defendant shall support approval of such Motion, including appearing at the hearing on the motion if so requested.

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

11. Governing Law and Construction

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

12. Entire Agreement

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

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

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

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

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

13. Retention of Jurisdiction

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

14. Authority to Stipulate to Consent Judgment

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15. No Effect on Other Settlements

15.1. Nothing in this Consent Judgment shall preclude CEH and/or Englander from resolving any claim against another entity on terms that are different than those contained in this Consent Judgment.

16. Execution in Counterparts

16.1. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

It Is So Stipulated:

Dated: June 4, 2014

Center for Environmental Health



Signature

CHARLIE PIZANO

Printed Name

ASSOCIATE DIRECTOR

Title

Dated: _____, 2014

Peter Englander

Signature

Dated: _____, 2014

Kinfine U.S.A. Inc.

Signature

Printed Name

Title

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

15. No Effect on Other Settlements

15.1. Nothing in this Consent Judgment shall preclude CEH and/or Englander from resolving any claim against another entity on terms that are different than those contained in this Consent Judgment.

16. Execution in Counterparts

16.1. The stipulations to this Consent Judgment may be executed in counterparts and by means of facsimile, which taken together shall be deemed to constitute one document.

It Is So Stipulated:

Dated: _____, 2014

Center for Environmental Health

Signature

Printed Name

Title

Dated: June 9, 2014

Peter Englander



Signature

Dated: 6/6, 2014

Kinfine U.S.A. Inc.



Signature

Len Gao

Printed Name

president

Title

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

It Is So Ordered, Adjudged, and Decreed:

Dated: _____, 2014

Judge of the Superior Court of the State of
California, County of Alameda