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8 Attorneys for Plaintiff  
9 PETER ENGLANDER

ENDORSED  
FILED  
ALAMEDA COUNTY

SEP 16 2014

CLERK OF THE SUPERIOR COURT  
BY YOLANDA ESTRADA Deputy

10 SUPERIOR COURT OF THE STATE OF CALIFORNIA

11 COUNTY OF ALAMEDA

12 PETER ENGLANDER,

13 Plaintiff,

14 v.

15 KIRKLAND'S, INC., *et al.*,

16 Defendants.

Case No. RG13673606

~~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.

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

1 Plaintiff Peter Englander and defendant Kinfine U.S.A, Inc., in *Englander v.*  
2 *Kinfine U.S.A., Inc. (Case No. RG13673580)*, having agreed through their respective  
3 counsel that Judgment be entered pursuant to the terms of their settlement agreement in the  
4 form of a Consent Judgment, by operation of which Kirkland's, Inc. is a released entity,  
5 and following this Court's issuance of an Order approving the Proposition 65 settlement  
6 and Consent Judgment,

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

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**IT IS SO ORDERED.**

Dated: SEP 16 2014

**GEORGE C. HERNANDEZ, JR.**  
\_\_\_\_\_  
JUDGE OF THE SUPERIOR COURT

# **EXHIBIT 1**

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

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8 2201 Broadway, Suite 302  
9 Oakland, California 94612  
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11 Attorneys for Plaintiff  
12 CENTER FOR ENVIRONMENTAL HEALTH

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19 Attorneys for Plaintiff  
20 PETER ENGLANDER

21 SUPERIOR COURT FOR THE STATE OF CALIFORNIA  
22 FOR THE COUNTY OF ALAMEDA

23 CENTER FOR ENVIRONMENTAL  
24 HEALTH, a non-profit corporation,

25 Plaintiff,

26 v.

27 A BABY, INC., et al.,

28 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.**

PETER ENGLANDER,

Plaintiff,

v.

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

Defendants.

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

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  
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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  
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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.<sup>1</sup>

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:

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27 <sup>1</sup> 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  
   California to cause cancer.

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

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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  
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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

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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

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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  
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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

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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:

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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.



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**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.

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**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

CAMPBELL PIZZANO

Printed Name

ASSOCIATE DIRECTOR

Title

Dated: \_\_\_\_\_, 2014

**Peter Englander**

Signature

Dated: \_\_\_\_\_, 2014

**Kinfine U.S.A. Inc.**

Signature

Printed Name

Title

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**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  
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**It Is So Ordered, Adjudged, and Decreed:**

Dated: \_\_\_\_\_, 2014

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