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THE CHANLER GROUP  
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Attorneys for Plaintiffs  
RUSSELL BRIMER and  
PETER ENGLANDER

DEC 21 2015  
ENDORSED  
FILED  
ALAMEDA COUNTY

JAN 14 2016

CLERK OF THE SUPERIOR COURT  
By YOLANDA ESTRADA Deputy

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

RUSSELL BRIMER and  
PETER ENGLANDER,

Plaintiffs,

v.

JAKKS PACIFIC, INC.; KIDS ONLY, LLC;  
KIDS ONLY, INC.; KID BRANDS, INC.;  
KIDS LINE, LLC; TOYS "R" US, INC.; and  
DOES 1-150, inclusive,

Defendants.

) Case No.: RG13677619  
)  
) ~~PROPOSED~~ CORRECTED  
) JUDGMENT PURSUANT TO  
) TERMS OF PROPOSITION 65  
) SETTLEMENT AND CONSENT  
) JUDGMENT AS TO TOYS "R" US,  
) INC.  
) Date: January 14, 2016  
) Time: 2:30 p.m.  
) Dept.: 17  
) Judge: Hon. George C. Hernandez, Jr.  
)  
) Reservation No.: R-1688437

1 In the above-entitled action, plaintiff Peter Englander and defendant Toys “R” Us, Inc.,  
2 having agreed through their respective counsel that Judgment be entered pursuant to the terms of  
3 their settlement agreement in the form of a [Proposed] Consent Judgment As To Toys “R” Us, Inc.  
4 (“Consent Judgment”), and following this Court’s issuance of an Order approving this Proposition  
5 65 settlement and Consent Judgment;

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

11

12 **IT IS SO ORDERED.**

13

14 Dated: JAN 14 2016

GEORGE C. HERNANDEZ, JR.

JUDGE OF THE SUPERIOR COURT

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# **EXHIBIT A**

1 Clifford A. Chanler, State Bar No. 135534  
2 Laralei S. Paras, State Bar No. 203319  
3 THE CHANLER GROUP  
4 2560 Ninth Street  
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9 Attorneys for Plaintiffs  
10 PETER ENGLANDER and  
11 RUSSELL BRIMER

12 ROGERS JOSEPH O'DONNELL  
13 JAMES ROBERT MAXWELL (State Bar No. 143203)  
14 311 California Street  
15 San Francisco, California 94104  
16 Telephone: 415.956.2828  
17 Facsimile: 415.956.6457

18 Attorneys for Defendant  
19 TOYS "R" US, INC.

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

22 RUSSELL BRIMER and  
23 PETER ENGLANDER,

24 Plaintiff,

25 v.

26 JAKKS PACIFIC, INC.; KIDS ONLY, LLC;  
27 KIDS ONLY, INC.; KID BRANDS, INC.;  
28 KIDS LINE, LLC; TOYS "R" US, INC.; and  
DOES 1-150, inclusive,

Defendants.

Case No. RG13677619

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

**[PROPOSED]**  
**CONSENT JUDGMENT**  
**AS TO TOYS "R" US, INC.**

(Health & Safety Code § 25249.6 *et seq.*)

Complaint Filed: April 23, 2013

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander (“Plaintiff”  
4 or “Englander”) and Toys “R” Us, Inc. (“Settling Defendant”), with Englander and Settling  
5 Defendant collectively referred to as the “Parties.”

6 **1.2 Peter Englander**

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

10 **1.3 Settling 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** Englander alleges that Settling Defendant manufactured, imported, sold  
16 and/or distributed for sale in California, products with foam cushioned components containing  
17 tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65 warnings.

18 **1.4.2** Pursuant to Proposition 65, on October 28, 2011, California identified and  
19 listed TDCPP as a chemical known to cause cancer. TDCPP became subject to the “clear and  
20 reasonable warning” requirements of Proposition 65 one year later on October 28, 2012. Cal. Code  
21 Regs., tit. 27, § 27001(b); Health & Safety Code §§ 25249.8 and 25249.10(b). TDCPP is  
22 hereinafter referred to as the “Listed Chemical.” Englander alleges that the Listed Chemical  
23 escapes from foam padding, leading to human exposures.

24 **1.5 Product Description**

25 The category of products that is covered by this Consent Judgment as to Settling Defendant  
26 is identified on Exhibit A (hereinafter “Products”).

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**1.6 Notice of Violation**

On March 27, 2013, plaintiff Peter Englander served Settling Defendant and certain requisite public enforcement agencies with a "60-Day Notice of Violation" ("Notice") that provided the recipients with notice of alleged violations of Proposition 65 based on the alleged failure to warn California consumers that the Products expose users to the Listed Chemical. To the best of the Parties' knowledge, no public enforcer has commenced or is diligently prosecuting the allegations set forth in the Notice.

**1.7 Complaint**

On April 30, 2013, plaintiff Russell Brimer filed a Complaint ("Complaint") in the Superior Court in and for the County of Alameda against Settling Defendant, other defendants and Does 1 through 150, captioned *Russell Brimer v. Jakks Pacific, Inc., et al.*, Case No. RG 13-677679, alleging violations of Proposition 65, based on the alleged unwarned exposures to TDCPP contained in children's padded upholstered chairs. On August 15, 2013, plaintiffs Russell Brimer and Peter Englander filed a First Amended Complaint ("Complaint"), alleging violations of Proposition 65 against Settling Defendant, other defendants and Does 1 through 150 based on alleged unwarned exposures to TDCPP contained in children's padded upholstered chairs.

**1.8 No Admission**

The Parties enter into this Consent Judgment as a full and final settlement of all claims that were raised in the Notice and Complaint, or that could have been raised in the Notice and Complaint, arising out of the facts and/or conduct concerning unwarned exposures to the Listed Chemical in the Products alleged therein. Settling Defendant denies the material factual and legal allegations contained in Englander's Notice and the Complaint, and maintains that all products that it has manufactured, imported, distributed, and/or sold in California, including the Products, have been and are in compliance with all laws, and are completely safe for their intended use. Nothing in this Consent Judgment shall be construed as an admission by Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall compliance with this Consent Judgment constitute or be construed as an admission by Settling Defendant of any fact, finding,

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

3 **1.9 Consent to Jurisdiction**

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

9 **2. DEFINITIONS**

10 **2.1 Detectable**

11 "Detectable" means containing more than 25 parts per million ("ppm") (the equivalent of  
12 .0025%) of TDCPP in foam padding of the Products, when analyzed by a laboratory accredited by  
13 the State of California, a federal agency, NVLAP (National Volunteer Laboratory Accreditation  
14 Program), American Association for Lab Accreditation (A2LA), ANSI-ASQ National  
15 Accreditation Board (ANAB) – ACLASS brand (an ANAB company), International Accreditation  
16 Service, Inc. (IAS), Laboratory Accreditation Bureau (L-A-B), Perry Johnson Laboratory  
17 Accreditation, Inc. (PJLA), International Laboratory Accreditation Cooperation (ILAC), or similar  
18 nationally recognized accrediting organization (such laboratory referred hereinafter as an  
19 "Accredited Lab") pursuant to EPA testing methodologies 3545 and 8270C, or equivalent  
20 methodologies utilized by federal or state agencies to determine the presence, and measure the  
21 quantity, of TDCPP and/or tris(2-chloroethyl) phosphate ("TCEP") in a solid substance.

22 **2.2 Effective Date**

23 "Effective Date" shall mean the date this consent judgment is entered by the Court.

24 **2.3 Reformulated Products**

25 "Reformulated Products" means Products that contain no Detectable amount of TDCPP or  
26 TCEP.

27 ///

28 ///

1           **2.4 Reformulation Standard**

2           The "Reformulation Standard" shall mean containing no more than 25 ppm for each of  
3 TDCPP and TCEP.

4 **3. INJUNCTIVE RELIEF: PRODUCT REFORMULATION AND WARNINGS**

5           **3.1 Reformulation Commitment**

6           Commencing on December 15, 2015, Settling Defendant shall not distribute, sell or offer for  
7 sale in California any Products that are not Reformulated Products.

8           **3.2 Vendor Notification/Certification**

9           To the extent that Settling Defendant intends to procure any more Products, on or before  
10 October 15, 2015, Settling Defendant shall provide written notice to its vendor of Products,  
11 requiring it to provide it with only Reformulated Products, to the extent the Products will be offered  
12 for sale in California. In addressing the obligation set forth in the preceding sentence, Settling  
13 Defendant shall not employ statements that will encourage its vendor to delay compliance with the  
14 Reformulation Standard. To the extent that Settling Defendant procures any more Products for sale  
15 in California, Settling Defendant shall subsequently obtain written certifications prior to such  
16 procurement, from its vendor that the Products are in compliance with the Reformulation Standard.  
17 Any such certifications obtained under this paragraph shall be held by Settling Defendant for at  
18 least two years after their receipt and shall be made available to Plaintiff upon his reasonable  
19 written request.

20           **3.3 Current Inventory**

21           Any Products in, or manufactured and en route to, Settling Defendant's inventory as of or  
22 after the Effective Date, that do not qualify as Reformulated Products and that Settling Defendant  
23 has reason to believe may be sold or distributed for sale in California, shall contain a clear and  
24 reasonable warning as set forth in Section 3.4 below unless Section 3.5 applies.

25           **3.4 Product Warnings**

26           **3.4.1 Product Labeling**

27           Any warning provided under Section 3.3 above shall be affixed to the packaging, labeling,  
28 or directly on each Product. Each warning shall be prominently placed with such conspicuousness

1 as compared with other words, statements, designs, or devices as to render it likely to be read and  
2 understood by an ordinary individual under customary conditions before purchase. Each warning  
3 shall be provided in a manner such that the consumer or user understands to which specific Product  
4 the warning applies, so as to minimize the risk of consumer confusion.

5 A warning provided pursuant to this Consent Judgment shall state (language in brackets  
6 optional):

7 **WARNING:** This product contains TDCPP, a  
8 [flame retardant] chemical known to  
9 the State of California to cause  
10 cancer.<sup>1</sup>

### 9 3.4.2 Internet Website Warning

10 A warning shall be given in conjunction with Settling Defendant's sale of the Products to  
11 consumers in California via the internet, which warning shall appear on one or more web pages  
12 displayed to a purchaser during the checkout process. The following warning statement shall be  
13 used and shall: (a) appear adjacent to or immediately following the display, description, or price of  
14 the Product; (b) appear as a pop-up box; or (c) otherwise appear automatically to the consumer.  
15 The warning text shall be the same type size or larger than the Product description text (language in  
16 brackets optional):

17 **WARNING:** This product contains TDCPP, a  
18 [flame retardant] chemical known to  
19 the State of California to cause  
20 cancer.<sup>2</sup>

### 19 3.5 Alternatives to Interim Warnings

20 The obligations of Settling Defendant under Section 3.4 shall be relieved provided Settling  
21 Defendant certifies on or before October 15, 2015 that, after the Effective Date, it will only  
22 distribute or cause to be distributed for sale in, or sell in, California, Products (i.e., Products beyond

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

<sup>2</sup>Footnote 1, *supra*, applies in this context as well.

1 the Exemplar Product) meeting the Reformulation Standard. The certifications provided by this  
2 Section are material terms and time is of the essence.<sup>3</sup>

3 4. MONETARY PAYMENTS

4 4.1 **Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

5 In settlement of all the claims referred to in this Consent Judgment, Settling Defendant shall  
6 pay the civil penalties shown for it on Exhibit A in accordance with this Section. Each penalty  
7 payment will be allocated by Englander in accordance with California Health & Safety Code  
8 § 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of Environmental  
9 Health Hazard Assessment ("OEHHHA"), and 25% of the penalty retained by Englander. Each  
10 penalty payment shall be delivered pursuant to Section 4.5 below. Settling Defendant shall be  
11 liable for payment of interest, at a rate of 10% simple interest, for all amounts due and owing under  
12 this Section that are not received within two business days of the due date.

13 4.1.1 Initial Civil Penalty. Within ten (10) days of the full execution of this  
14 Consent Judgment by the Parties, Settling Defendant shall deliver the initial civil penalty payment  
15 in the amount identified on Exhibit A to Rogers Joseph O'Donnell at the address set forth in  
16 Section 8, to be held in trust pending the Court's approval of this Consent Judgment.

17 4.1.2 Second Civil Penalty. On or before October 15, 2015, Settling Defendant  
18 shall make a second civil penalty payment in the amount identified on Exhibit A. The amount of  
19 the second penalty may be reduced according to any penalty waiver for which Settling Defendant is  
20 eligible under Section 4.1.3, below.

21 4.1.3 Reductions to Civil Penalty Payment Amounts. Settling Defendant may  
22 reduce the amount of the second civil penalty payment identified on Exhibit A by providing  
23 Englander with certification of certain efforts undertaken to sell or offer for sale only Products that  
24 are Reformulated Products. The options to provide a written certification in lieu of making a  
25

26  
27 <sup>3</sup> The term "Exemplar Product" means the product specifically noticed in Plaintiff's March 27, 2013  
28 60-day notice to Settling Defendant alleging TDCPP in children's foam padded chairs in violation of  
Proposition 65.

1 Settling Defendant's second civil penalty payment constitute material terms of this Consent  
2 Judgment, and with regard to such terms, time is of the essence.

3 **4.1.3(i) Partial Penalty Waiver for Termination of Distribution to**  
4 **California of Unreformulated Inventory.**

5 As shown on Exhibit A, the second civil penalty shall be waived, if an officer or other  
6 authorized representative of Settling Defendant provides Englander with written certification, on or  
7 before October 15, 2015, confirming that, as of October 15, 2015, and continuing into the future, it  
8 will only offer for sale, or sell, in California, Reformulated Products.

9 **4.2 Representations**

10 Settling Defendant represents that the sales data and other information concerning its size,  
11 knowledge of the Listed Chemical, and prior reformulation and/or warning efforts, that it provided  
12 to Englander in negotiating this Consent Judgment was truthful to its knowledge at the time of  
13 execution of this Consent Judgment and a material factor upon which Englander relied to determine  
14 the amount of civil penalties assessed pursuant to Health & Safety Code § 25249.7. If, within nine  
15 months of the Effective Date, Englander discovers and presents to Settling Defendant, evidence  
16 demonstrating that the preceding representation and warranty was materially inaccurate, then  
17 Settling Defendant shall have 30 days to meet and confer regarding Englander's contention. Should  
18 this 30 day period pass without any such resolution between Englander and Settling Defendant,  
19 Englander shall be entitled to file a formal legal claim including, but not limited to, a claim for  
20 damages for breach of contract. Settling Defendant further represents that in implementing the  
21 requirements set forth in Sections 3.1 and 3.2 of this Consent Judgment, it will voluntarily employ  
22 commercial best efforts to achieve reformulation of the Products on a nationwide basis and not  
23 employ statements that will encourage a vendor to limit its compliance with the Reformulation  
24 Standard to goods intended for sale to consumers in California.

25 **4.3 Stipulated Penalties for Certain Violations of the Reformulation Standard.**

26 If Englander provides notice and appropriate supporting information to Settling Defendant,  
27 including but not limited to test results, that levels of TDCPP and/or TCEP in excess of the  
28 Reformulation Standard have been detected in one or more Products labeled or otherwise marked in

1 an identifiable manner as sold or offered for sale in California after a deadline for meeting the  
2 Reformulation Standard set forth in Section 3.1 above, Settling Defendant may elect to pay a  
3 stipulated penalty to relieve any further potential liability under Proposition 65 or sanction under  
4 this Consent Judgment as to Products sourced from the vendor in question.<sup>4</sup> The stipulated penalty  
5 shall be \$1,500 if the violation level is below 100 ppm and \$3,000 if the violation level is between  
6 100 ppm and 249 ppm, this being applicable for any amount in excess of the Reformulation  
7 Standards but under 250 ppm.<sup>5</sup> Englander shall further be entitled to reimbursement of his  
8 associated expenses in an amount not to exceed \$5,000 regardless of the stipulated penalty level.  
9 Settling Defendant under this Section must provide notice and appropriate supporting information  
10 relating to the purchase (e.g. vendor name and contact information including representative,  
11 purchase order, certification (if any) received from vendor for the exemplar or subcategory of  
12 products), test results, and a letter from a company representative or counsel attesting to the  
13 information provided, to Englander within 30 calendar days of receiving test results from  
14 Englander's counsel. Any violation levels at or above 250 ppm shall be subject to the full remedies  
15 provided pursuant to this Consent Judgment and at law. Before any payment is required or motion  
16 to enforce is filed under this Section, Settling Defendant shall be entitled to present any evidence  
17 rebutting Englander's claim, and the parties shall meet and confer in good faith in an attempt to  
18 resolve any dispute. In the event that Moore's test results vary from those provided by Settling  
19 Defendant and Settling Defendant's test result demonstrates less than 25 ppm for TDCPP and/or  
20 TCEP, the parties shall meet and confer about an appropriate resolution and/or agree to test a  
21 mutually selected sample of the Product by a third independent laboratory to be mutually agreed  
22 upon. The expenses of the third party laboratory shall be borne by the party whose test results  
23 reflect the greatest difference from those of the third laboratory. The results of the third laboratory

24  
25 <sup>4</sup>This Section shall not be applicable where the vendor in question had previously been found by  
26 Settling Defendant to have provided unreliable certifications as to meeting the Reformulation Standard in its  
27 Products on more than one occasion. Notwithstanding the foregoing, a stipulated penalty for a second  
28 exceedance by Settling Defendant's vendor at a level between 100 and 249 ppm shall not be available after  
December 31, 2015.

<sup>5</sup>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 shall be deemed conclusive for purposes of determining the appropriate remedy under this  
2 paragraph.

3 **4.4 Reimbursement of Fees and Costs**

4 The Parties acknowledge that Englander and his counsel offered to resolve this dispute  
5 without reaching terms on the amount of fees and costs to be reimbursed to them, thereby leaving  
6 this fee reimbursement issue to be resolved after the material terms of the agreement had been  
7 settled. Shortly after the other settlement terms had been finalized, Settling Defendant expressed a  
8 desire to resolve the fee and cost issue. Settling Defendant then agreed to pay Englander and his  
9 counsel under general contract principles and the private attorney general doctrine codified at  
10 California Code of Civil Procedure § 1021.5 for all work performed through the mutual execution  
11 of this agreement, including the fees and costs incurred as a result of investigating, bringing this  
12 matter to Settling Defendant's attention, negotiating a settlement in the public interest, and seeking  
13 court approval of the same. In addition, the negotiated fee and cost figure expressly includes the  
14 anticipated significant amount of time Englander's counsel will incur to monitor various provisions  
15 in this agreement. More specifically, Settling Defendant agrees under this Section to pay  
16 Englander's counsel the amount of fees and costs indicated on Settling Defendant's Exhibit A.

17 **4.5 Payment Procedures**

18 (a) All payments required by Sections 4.1.1, 4.1.2 (unless waived) and 4.4 shall  
19 be delivered to Rogers Joseph O'Donnell at the address set forth in Section 8 within ten (10) days  
20 of the full execution of this Consent Judgment by the Parties, to be held in trust pending the Court's  
21 approval of this Consent Judgment. Rogers Joseph O'Donnell shall confirm, in writing within five  
22 days of deposit, that the funds have been deposited in a trust account. Within five business days of  
23 the Effective Date, Rogers Joseph O'Donnell shall deliver all payments required by Sections 4.1.1,  
24 4.1.2 (unless waived) and 4.4 above held in trust pursuant to this Section 4.5(a) to:

- 25 (i) For the civil penalty payments required by Sections 4.1.1 and 4.1.2  
26 (unless waived), to The Chanler Group at the address set forth in  
27 Section 4.5(b) payable to "Peter Englander, Client Trust Account".  
28 (ii) For reimbursement of fees and costs set forth in Section 4.4, to The

1 Chanler Group at the address set forth in Section 4.5(b) payable to "The  
2 Chanler Group".

3 (b) All payments owed to Englander and his counsel, pursuant to Sections 4.1,  
4 4.3, 4.4, and 4.5(a) shall be delivered to the following payment address:

5 The Chanler Group  
6 Attn: Proposition 65 Controller  
7 2560 Ninth Street  
8 Parker Plaza, Suite 214  
9 Berkeley, CA 94710

8 (c) The Chanler Group shall have sole responsibility for delivering any required  
9 portion of the penalty payments hereunder to OEHHA.

10 **5. CLAIMS COVERED AND RELEASED**

11 **5.1 Englander's Release of Proposition 65 Claims**

12 Englander, acting on his own behalf and in the public interest, hereby releases Settling  
13 Defendant, its parents, subsidiaries, affiliates, directors, officers, agents, employees, attorneys, and  
14 each entity to whom Settling Defendant directly or indirectly distributes or sells the Products,  
15 including, but not limited to, downstream distributors, wholesalers, customers, retailers,  
16 franchisees, cooperative members, and licensees (collectively, "Releasees"), from all claims for any  
17 violations of Proposition 65 through the Effective Date based on unwarned exposures to the Listed  
18 Chemical in the Products, as set forth in the Notice and Complaint. Compliance with the terms of  
19 this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to the  
20 Listed Chemical from the Products, as set forth in the Notice and Complaint. The Parties further  
21 understand and agree that this Section 5.1 release shall not extend upstream to any entities, other  
22 than Settling Defendant and its Affiliates, that manufactured the Products or any component parts  
23 thereof, or any distributors or suppliers who sold the Products or any component parts thereof to  
24 Settling Defendant or its Affiliates.

25 **5.2 Englander's Individual Release of Claims**

26 Englander, in his individual capacity only and *not* in his representative capacity, on behalf  
27 of himself, his past and current agents, representatives, attorneys, successors, and assignees,  
28 provides a release herein to Settling Defendant and the Releasees, which shall be effective as a full

1 and final accord and satisfaction, as a bar to all actions, causes of action, obligations, costs,  
2 expenses, attorneys' fees, damages, losses, claims, liabilities, and demands of any nature, character,  
3 or kind, whether known or unknown, suspected or unsuspected, limited to and arising out of alleged  
4 or actual exposures to TDCPP, TCEP, and/or TDBPP in the Products manufactured, imported,  
5 distributed, or sold by Settling Defendant or its Affiliates prior to the Effective Date. The Parties  
6 further understand and agree that this Section 5.2 release shall not extend upstream to any entities,  
7 other than Settling Defendant and its Affiliates, that manufactured the Products, or any component  
8 parts thereof, or any distributors or suppliers who sold the Products, or any component parts thereof  
9 to Settling Defendant or its Affiliates. Nothing in this Section affects Englander's rights to  
10 commence or prosecute an action under Proposition 65 against a Releasee that does not involve  
11 Settling Defendant's Products.

12 **5.3 Settling Defendant's Release of Englander**

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

19 **5.4 Dismissal of Remaining Claims**

20 Upon the Court's entry of this Consent Judgment any remaining claims against Settling  
21 Defendant in the Complaint that are not resolved by this Consent Judgment shall be deemed  
22 dismissed without prejudice.

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 in its entirety and entered by the Court  
26 within one year after it has been fully executed by all Parties unless the Parties otherwise agree. If  
27 the Court does not approve the Consent Judgment, the Parties shall meet and confer as to whether to  
28 modify the language or appeal the ruling. If the Parties do not jointly agree on a course of action to

1 take, then the case shall proceed in its normal course on the Court's trial calendar. If the Court's  
2 approval is ultimately overturned by an appellate court, the Parties shall meet and confer as to  
3 whether to modify the terms of this Consent Judgment. If the Parties do not jointly agree on a  
4 course of action to take, then the case shall proceed in its normal course on the Court's trial  
5 calendar. In the event that this Consent Judgment is entered by the Court and subsequently  
6 overturned by any appellate court, any monies that have been provided to Englander or his counsel  
7 pursuant to Section 4, above, shall be refunded within 15 days of the appellate decision becoming  
8 final. If the Court does not approve and enter the Consent Judgment within one year of the  
9 Effective Date, any monies that have been held in trust for Englander or his counsel pursuant to  
10 Section 4, above, shall be refunded to Settling Defendant within 15 days unless the Parties agree  
11 otherwise.

12 **7. GOVERNING LAW**

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

22 **8. NOTICES**

23 Unless specified herein, all correspondence and notices required to be provided pursuant to  
24 this Consent Judgment shall be in writing and sent by: (i) personal delivery, (ii) first-class  
25 registered or certified mail, return receipt requested; or (iii) overnight courier to any Party by the

26 ///

27 ///

28 ///

1 other Party at the following addresses:

2 To Settling Defendant:

To Englander:

3 At the address shown on Exhibit A

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

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

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

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

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

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

16 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

25 **12. MODIFICATION**

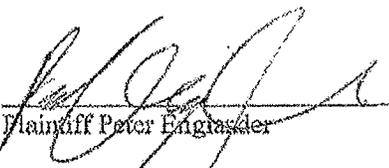
26 This Consent Judgment may be modified only: (1) by written agreement of the Parties and  
27 upon entry of a modified Consent Judgment by the Court thereon; or (2) upon a successful motion  
28 of any party and entry of a modified Consent Judgment by the Court.

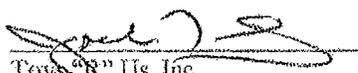
1 13. AUTHORIZATION

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.

5 AGREED TO:

AGREED TO:

6  
7   
8 Plaintiff Peter Englasler  
9 Date: October 15, 2015

10   
11 Toys "R" Us, Inc.  
12 Joel S. Tennenberg  
13 Vice President - Litigation & Regulatory  
14 Counsel  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
Date: October 15, 2015

1 EXHIBIT A

2  
3 I. Name of Settling Defendant:

4 Toys "R" Us, Inc.  
5 One Geoffrey Way  
Wayne, NJ 07470

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

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

9  Upholstered furniture

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

11  Car seats, strollers

12  Other (specify): Foam-filled padded upholstered children's chairs supplied by Kid Brands,  
Inc. or Kids Line, LLC.

13  
14 III. Settling Defendant's Required Settlement Payments

15 A. Penalties, \$14,000, as follows:

16 \$ 4,000 initial payment due within ten (10) days of the full execution of this Consent  
Judgment by the Parties as specified in Section 4;

17 \$10,000 second payment due on or before October 15, 2015, which may be waived pursuant  
18 to Section 4.1.3(i); and

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

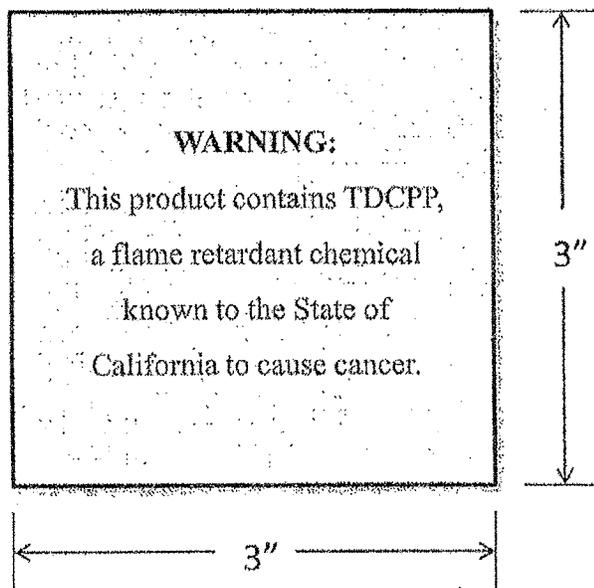
20 A. Fees and Costs are: \$16,000 payable as specified in Section 4.

21  
22 V. Person(s) to receive Notices on behalf of Settling Defendant pursuant to Section 8:

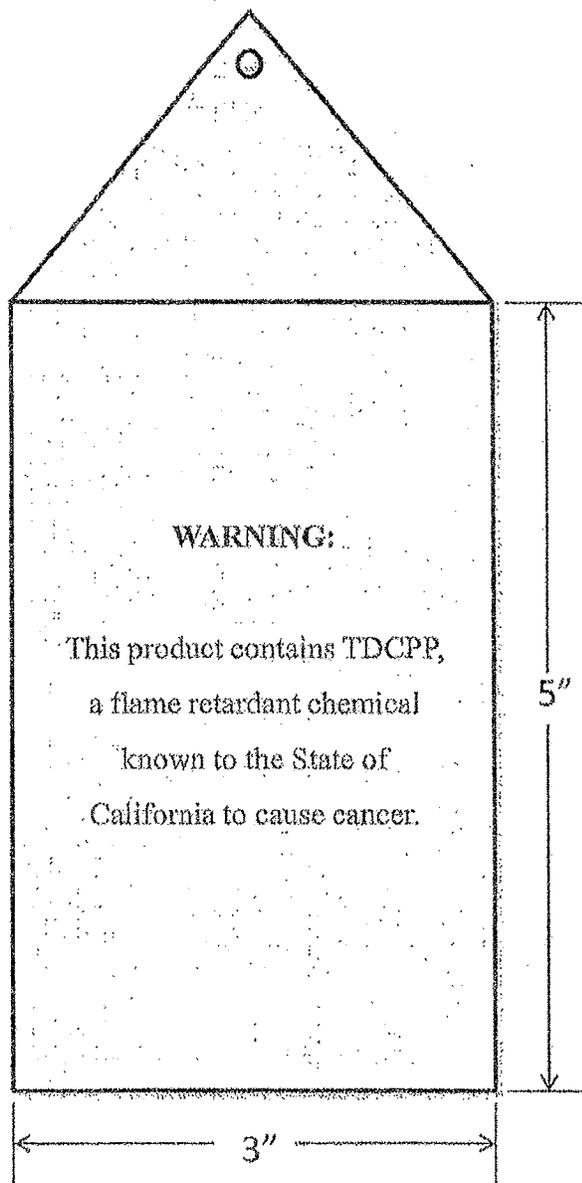
23 General Counsel  
24 Toys "R" Us, Inc.  
One Geoffrey Way  
Wayne, NJ 07470

J. Robert Maxwell, Esq.  
Rogers Joseph O'Donnell, A.P.C.  
311 California Street, 10th floor  
San Francisco, CA 94104

# **EXHIBIT B**



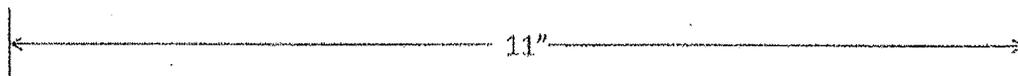
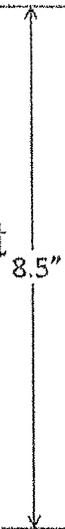
**INSTRUCTIONS:** Minimum 12 pt. font. "WARNING;" text must be bold.



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

**WARNING:**

This product contains TDCPP, a flame retardant  
chemical known to the State of California to  
cause cancer.



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