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6 Attorneys for Plaintiff  
LAURENCE VINOCUR  
7

ENDORSED  
FILED  
ALAMEDA COUNTY

JUL 31 2014

CLERK OF THE SUPERIOR COURT  
By YOLANDA ESTRADA Deputy

8 SUPERIOR COURT OF THE STATE OF CALIFORNIA

9 COUNTY OF ALAMEDA

10 UNLIMITED CIVIL JURISDICTION  
11

12 LAURENCE VINOCUR,

13 Plaintiff,

14 v.

15 KIDS II, INC.; et al.,

16 Defendants.  
17  
18  
19

Case No. RG13691256

**[PROPOSED] JUDGMENT PURSUANT TO  
TERMS OF PROPOSITION 65  
SETTLEMENT AND CONSENT  
JUDGMENT**

Date: July 31, 2014

Time: 8:30 a.m.

Dept. 17

Judge: Hon. George C. Hernandez, Jr.

Reservation No. R-1520036  
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1 In the above-entitled action, Plaintiff Laurence Vinocur and Defendant Kids II, Inc.,  
2 having agreed through their respective counsel that judgment be entered pursuant to the terms of  
3 the Proposition 65 settlement agreement in the form of the [Proposed] Consent Judgment attached  
4 as **Exhibit 1** hereto (“Consent Judgment”) entered into by the parties, and following issuance of  
5 an order approving this Proposition 65 settlement agreement and entering the Consent Judgment.

6 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that pursuant to Health &  
7 Safety Code section 25249.7(f)(4) and Code of Civil Procedure section 664.5, judgment is entered  
8 in accordance with the terms of the Consent Judgment attached hereto as **Exhibit 1**. By  
9 stipulation of the parties, the Court shall retain jurisdiction to enforce the settlement under Code  
10 of Civil Procedure section 664.6.

11 **IT IS SO ORDERED.**

12 Dated: JUL 31 2014  
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**GEORGE C. HERNANDEZ, JR.**  
14 \_\_\_\_\_  
15 JUDGE OF THE SUPERIOR COURT  
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# **EXHIBIT 1**

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8 Attorneys for Plaintiff  
9 LAURENCE VINOCUR

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

12 LAURENCE VINOCUR

13 Plaintiff,

14 v.

15 KIDS II, INC.; et al.,

16 Defendants.

Case No. RG13691256

**[PROPOSED] CONSENT JUDGMENT AS  
TO KIDS II, INC.,**

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

1 **1. INTRODUCTION**

2 **1.1. Parties**

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

6 **1.2. Plaintiff**

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

10 **1.3. Settling Defendant**

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

14 **1.4. General Allegations**

15 Plaintiff alleges that the Settling Defendant manufactured, imported, sold and/or distributed  
16 for sale in California, nursing pillows and activity gyms with foam cushioned components  
17 containing tris(1,3-dichloro-2-propyl) phosphate (“TDCPP”) without the requisite Proposition 65  
18 health hazard warnings.<sup>1</sup> Plaintiff alleges that TDCPP escapes from foam padding, leading to  
19 human exposures.

20 Since December 2010, nursing pillows have been exempt from California’s flammability  
21 standard (“TB 117 Exemption”). Cal. Code Regs. tit. 4, § 1374.2(c).

22 **1.5. Product Description**

23 The categories of products that are covered by this Consent Judgment are nursing pillows  
24 and activity gyms with polyurethane foam containing TDCPP (collectively herein: “Products”).

25  
26 <sup>1</sup> The category of products referred to in this Consent Judgment as “activity gyms” has been  
27 referred to by Plaintiff as “prop up pillows” in Plaintiff’s First Amended Complaint and  
Supplemental 60-Day Notice of Violation.

1           **1.6. Notices of Violation**

2           On April 10, 2013, Plaintiff served Kids II, Toys “R” Us, Inc. (“Toys “R” Us”), and certain  
3 requisite public enforcement agencies with a “60-Day Notice of Violation” (“April 10 Notice”) that  
4 provided recipients with notice of alleged violations of Proposition 65 based on Kids II’s and Toys  
5 “R” Us’s alleged failure to warn their customers and consumers that their nursing pillows with  
6 foam padding expose users in California to TDCPP.

7           On July 12, 2013, Vinocur served Kids II, Inc., Toys “R” Us, Target Corporation  
8 (“Target”), and certain requisite public enforcement agencies with a “Supplemental 60-Day Notice  
9 of Violation” (“July 12 Notice”) that provided the recipients with notice of alleged violations of  
10 Proposition 65 based on Kids II’s and Target’s alleged failure to warn their customers and  
11 consumers that their activity gyms expose users in California to TDCPP; and on Kids II’s and  
12 Target’s alleged failure to warn their customers and consumers that their activity gyms with foam  
13 padding expose users in California to TDCPP.

14           Collectively, the April 10 Notice and the July 12 Notice, shall be referred to herein as the  
15 “Notices.” To the best of the Parties’ knowledge, no public enforcer has commenced or is  
16 diligently prosecuting the allegations set forth in the Notices.

17           **1.7. Complaint and First Amended Complaint**

18           On August 9, 2013, Plaintiff filed a Complaint in the Superior Court in and for the County  
19 of Alameda against the Settling Defendant, Toys “R” Us, and Does 1 through 150, *Laurence*  
20 *Vinocur v. Kids II Inc., et al.*, Case No. RG 13691256, alleging violations of Proposition 65, based  
21 in part on the alleged unwarned exposures to TDCPP contained in Settling Defendant’s nursing  
22 pillows.

23           On December 27, 2013, Plaintiff filed a First Amended Complaint, amending the Complaint  
24 to include the violations of Proposition 65 alleged in the July 12 Notice and adding Target as a  
25 Defendant.

1           **1.8. No Admission**

2           The Settling Defendant denies the material factual and legal allegations contained in  
3 Plaintiff's Notices and Complaint and maintains that all products that it has manufactured,  
4 imported, distributed, and/or sold in California, including the Products, have been and are in  
5 compliance with all laws. Nothing in this Consent Judgment shall be construed as an admission by  
6 the Settling Defendant of any fact, finding, conclusion, issue of law, or violation of law, nor shall  
7 compliance with this Consent Judgment constitute or be construed as an admission by the Settling  
8 Defendant of any fact, finding, conclusion, issue of law, or violation of law. However, this section  
9 shall not diminish or otherwise affect the Settling Defendant's obligations, responsibilities, and  
10 duties under this Consent Judgment.

11           **1.9. Consent to Jurisdiction**

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

17 **2. DEFINITIONS**

18           **2.1. California Customers**

19           "California Customer" shall mean any customer that the Settling Defendant is aware of or  
20 has records that, as of the Effective Date, is located in California, has a California warehouse or  
21 distribution center, maintains a retail outlet in California, or has made internet sales of the Products  
22 into California on or after January 1, 2011.

23           **2.2. Detectable**

24           "Detectable" shall mean containing more than 25 parts per million ("ppm") (the equivalent  
25 of .0025%) of TDCPP (or, upon election of the Partial Penalty Waiver for Extended Reformulation  
26 pursuant to Section 4.1.1, more than 25 ppm each of TDCPP and tris(2,3-dibromopropyl)phosphate  
27 ("TDBPP")) in any material, component, or constituent of a subject product, when analyzed

1 pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by  
2 federal or state agencies to determine the presence, and measure the quantity, of TDCPP and  
3 TDBPP in a solid substance, by a laboratory accredited by the American Association for Laboratory  
4 Accreditation (“A2LA”).

5 **2.3. Effective Date**

6 “Effective Date” shall mean March 1, 2014.

7 **2.4. Entry Date**

8 “Entry Date” is the date upon which the Court approves and enters this Consent Judgment.

9 **2.5. Listed Chemical**

10 TDCPP shall hereinafter be referred to as the “Listed Chemical.”

11 **2.6. Reformulated Products**

12 “Reformulated Products” shall mean nursing pillows and activity gyms that contain no  
13 Detectable amount of TDCPP in any foam components.

14 **2.7. Reformulation Standard**

15 The “Reformulation Standard” shall mean containing no Detectable amount of TDCPP.

16 **2.8. Retailer**

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

19 **3. INJUNCTIVE RELIEF: REFORMULATION**

20 **3.1. Reformulation Commitment**

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

24 **3.2. Vendor Notification/Certification**

25 By April 15, 2014, the Settling Defendant shall provide written notice to all of its  
26 then-current vendors of the Products that will be sold or offered for sale in California,  
27 or to California Customers, (1) instructing each such vendor to use reasonable efforts to



1 provide only Reformulated Products for potential sale in California, and (2) informing each vendor  
2 of the TB 117 Exemption. Settling Defendant shall request written certifications, no later than May  
3 15, 2014, from such vendors, and any vendors engaged subsequent to the Effective Date and before  
4 May 15, 2014, that the Products manufactured by such vendors are in compliance with the  
5 Reformulation Standard. In addressing the obligation set forth in the preceding sentence, the  
6 Settling Defendant shall not employ statements that will encourage a vendor to delay compliance  
7 with the Reformulation Standard. Certifications shall be held by the Settling Defendant for at least  
8 two years after their receipt and shall be made available to Plaintiff upon request.

9 **3.3. Current Inventory**

10 Any Products in, or manufactured and en route to, the Settling Defendant's inventory as of  
11 the Effective Date, that do not qualify as Reformulated Products and that the Settling Defendant has  
12 reason to believe may be sold or distributed for sale in California, shall contain a clear and  
13 reasonable warning as set forth in Section 3.4 below.

14 The obligations of the Settling Defendant under this section shall be relieved provided the  
15 Settling Defendant certifies on or before April 15, 2014, that, after June 30, 2014, it will only  
16 distribute or cause to be distributed for sale in, or sell in, California, or to California Customers for  
17 sale in California, Products (i.e., Products beyond the Exemplar Product) meeting the  
18 Reformulation Standard. This certification is a material term of this agreement and time is of the  
19 essence.

20 **3.4. Product Warnings**

21 **3.4.1. Product Labeling**

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

1 A warning provided pursuant to this Consent Judgment shall state:<sup>2</sup>

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

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

12 **3.4.2. Internet Website Warning**

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

21  
22 **WARNING:** This product contains TDCPP, a flame  
23 retardant chemical known to the State  
of California to cause cancer.<sup>3</sup>

24 <sup>2</sup> The warning language required by this Section may be modified into a hybrid warning  
25 statement, subject to Plaintiff's approval, which shall not be unreasonably withheld, to the extent  
26 the Settling Defendant elects to warn for chemicals listed under Proposition 65 in addition to  
27 TDCPP. The Parties agree that the following hybrid warning language shall not be deemed to meet  
the requirements of California Code of Regulations, title 27, section 25601 *et seq.* and shall not be  
used pursuant to this Consent Judgment: (a) "cancer or birth defects or other reproductive harm;"  
and (b) "cancer, birth defects or other reproductive harm."

1 **4. MONETARY PAYMENTS**

2 In settlement of all the claims referred to in this Consent Judgment, the Settling Defendant  
3 shall pay the civil penalties shown for it on Exhibit A and the fees and costs incurred by Vinocur in  
4 bringing and prosecuting this action. Each payment shall be made within five business days of the  
5 date it is due and be delivered to the addresses listed in Section 4.5 below. The Settling Defendant  
6 shall be liable for payment of interest, at a rate of 10% simple interest, for all amounts due and  
7 owing under Section 4 that are not received within five business days of the due date.

8 **4.1. Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

9 The Settling Defendant shall make a civil penalty payment in the amount identified on  
10 Exhibit A, which shall be due within two business days of the Entry Date. The amount of the civil  
11 penalty shall be reduced by the amounts identified on Exhibit A if the Settling Defendant is eligible  
12 according to the penalty waivers in Sections 4.1.1 and 4.1.2. The options to provide written  
13 certifications in lieu of paying portions of the Settling Defendant's civil penalty constitute material  
14 terms of this Consent Judgment, and with regard to such terms, time is of the essence.

15 The penalty payment will be allocated in accordance with California Health & Safety Code  
16 section 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of  
17 Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25% of the penalty  
18 remitted to "The Chanler Group in Trust for Vinocur."

19 **4.1.1. Partial Penalty Waiver for Extended Reformulation**

20 As shown on Exhibit A, a portion of the civil penalty shall be waived, to the extent that the  
21 Settling Defendant has agreed that, as of March 31, 2014, and continuing into the future, Settling  
22 Defendant shall only manufacture or import for distribution or sale in California or cause to be  
23 manufactured or imported for distribution or sale in California, Reformulated Products which do  
24 not contain a Detectable amount of TDBPP. An officer or other authorized representative of the  
25 Settling Defendant shall provide Plaintiff with a written certification confirming compliance with  
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27 <sup>3</sup> The preceding footnote applies in this context as well.

1 such conditions, which certification must be received by Plaintiff's counsel on or before April 15,  
2 2014.

3 **4.1.2. Partial Penalty Waiver for Termination of Distribution to California of**  
4 **Inventory of Non-Reformulated Products**

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

9 **4.2. Representation**

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

20 **4.3. Stipulated Penalties for Certain Violations of the Reformulation Standard**

21 If Plaintiff provides notice and appropriate supporting information to the Settling Defendant  
22 that the Reformulation Standard has been exceeded in one or more Products obtained by Plaintiff  
23 from a California Customer after a deadline for meeting the Reformulation Standard has arisen  
24 under Section 3 of this Consent Judgment, then the Settling Defendant may elect to pay a stipulated  
25 penalty to relieve any further potential liability under Proposition 65 or sanction under this Consent  
26 Judgment as to the Products sourced from the vendor in question and identified by Plaintiff as  
27 failing to meet the Reformulation Standard ("Unreformulated Product"). Plaintiff must provide

1 Settling Defendant a written certification indicating from where and when Plaintiff obtained the  
2 Unreformulated Product. The stipulated penalty shall be \$1,500 if the concentration of the Listed  
3 Chemical is Detectable but less than 100 ppm, and \$3,000 if the concentration of the Listed  
4 Chemical is between 100 ppm and 249 ppm. For purposes of calculating stipulated penalties under  
5 this subsection, the concentration of the Listed Chemical must be measured using the same testing  
6 methodologies and in an accredited lab pursuant to the standards set forth in section 2.2 above,  
7 "Detectable."

8 In order to elect payment of stipulated penalties in lieu of defending an enforcement action  
9 by Plaintiff, the Settling Defendant must provide notice and appropriate supporting information  
10 relating to its purchase of the Unreformulated Product, including but not limited to, the following,  
11 as available: vendor name and contact information including the name of an appropriate  
12 representative of the vendor, purchase order, certification (if any) received from the vendor  
13 covering the Unreformulated Product, and test results. Settling Defendant shall also provide to  
14 Plaintiff, within thirty calendar days of receiving test results from Plaintiff's counsel, certification  
15 from counsel for or an officer or director of Settling Defendant attesting to the information  
16 provided.

17 Plaintiff shall be entitled to reimbursement of his expense associated with Settling  
18 Defendant's election pursuant to this Section in an amount not to exceed \$6,000 regardless of the  
19 stipulated penalty level.

20 This Section shall not be applicable where the vendor in question had previously been found  
21 by the Settling Defendant to provide unreliable certifications as to meeting the Reformulation  
22 Standard in its Products. Notwithstanding the foregoing, a stipulated penalty for a second  
23 exceedance by the Settling Defendant's vendor at a level between 100 and 249 ppm shall not be  
24 available after July 1, 2015. Stipulated penalties shall not be available for Unreformulated Products  
25 containing any one or more of the Listed Chemicals in excess of 249 ppm.

1           **4.4. Reimbursement of Fees and Costs**

2           The Settling Defendant agrees, upon the Court's approval and entry of this Consent  
3 Judgment, to pay Plaintiff's counsel the amount of fees and costs indicated on Exhibit A. The  
4 Settling Defendant further agrees to tender, and shall tender, its full required payment under this  
5 Section to a trust account at The Chanler Group (checks made payable "In Trust for The Chanler  
6 Group"), due within two business days of the Entry Date.

7           **4.5. Payment Procedures**

8                   **4.5.1. Issuance of Payments**

9                   (a) All payments owed to Plaintiff and his counsel shall be delivered to  
10 the following payment address:

11                                   The Chanler Group  
12                                   Attn: Proposition 65 Controller  
13                                   2560 Ninth Street  
14                                   Parker Plaza, Suite 214  
15                                   Berkeley, CA 94710

16                   (b) All payments owed to OEHHA (EIN: 68-0284486) shall be delivered  
17 directly to OEHHA (Memo line "Prop 65 Penalties") at one of the following addresses, as  
18 appropriate:

19                                   For United States Postal Service Delivery:

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

25                                   For Non-United States Postal Service Delivery:

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

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**4.5.2. Proof of Payment to OEHHA**

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

**4.5.3. Tax Documentation**

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

**5. CLAIMS COVERED AND RELEASED**

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

Plaintiff, acting on his own behalf and in the public interest, releases the Settling Defendant, its parents, subsidiaries, affiliated entities under common ownership, and their respective directors, officers, agents employees, attorneys, successors and assigns, and each entity to whom the Settling Defendant directly or indirectly distribute or sell Products including, but not limited to, downstream distributors, wholesalers, customers, retailers, franchisees, cooperative members, and licensees, in addition to those entities identified on Schedule A (collectively, "Releasees"), from all claims for violations of Proposition 65 through the Effective Date based on unwarned exposures to TDCPP in the Products, as set forth in the Notices. Compliance with the terms of this Consent Judgment constitutes compliance with Proposition 65 with respect to exposures to TDCPP from the Products, as set forth in the Notices. The Parties further understand and agree that this Section 5.1 release shall not extend upstream to any entities that manufactured the Products or any component parts thereof, or any distributors or suppliers who sold the Products or any component parts thereof to the Settling Defendant.

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

2           Plaintiff, in his individual capacity only and *not* in his representative capacity, releases the  
3 Releasees from all actions, causes of action, obligations, costs, expenses, attorneys' fees, damages,  
4 losses, claims, liabilities, and demands of Plaintiff of any nature, character, or kind, whether known  
5 or unknown, suspected or unsuspected, limited to and arising out of alleged or actual exposures to  
6 the Listed Chemical in the Products manufactured, imported, distributed, or sold by the Settling  
7 Defendant prior to the Effective Date. If Settling Defendant complies with Section 4.1.2, Plaintiff,  
8 acting on his own behalf, releases Settling Defendant and all Releasees from all claims for  
9 violations of Proposition 65 through the Effective Date based on unwarned exposures to TDBPP in  
10 the Products. The Parties further understand and agree that this Section 5.2 release shall not extend  
11 upstream to any entities that manufactured the Products, or any component parts thereof, or any  
12 distributors or suppliers who sold the Products, or any component parts thereof, to the Settling  
13 Defendant. Nothing in this Section 5 affects Plaintiff's rights to commence or prosecute an action  
14 under Proposition 65 against a Releasee that does not involve the Settling Defendant's Products.

15           **5.3. Settling Defendant's Release of Plaintiff**

16           The Settling Defendant, on behalf of itself, its past and current agents, representatives,  
17 attorneys, successors, and assignees, hereby waives any and all claims against Plaintiff and his  
18 attorneys and other representatives, for any and all actions taken or statements made (or those that  
19 could have been taken or made) by Plaintiff and his attorneys and other representatives, whether in  
20 the course of investigating claims or otherwise seeking to enforce Proposition 65 against it in this  
21 matter with respect to the Products; provided, however, such release shall not extend to or include  
22 causes of actions relating to the confidentiality obligations of Plaintiff and Settling Defendant  
23 created pursuant to the Amended Confidentiality Agreement between Plaintiff and Settling  
24 Defendant dated January 21, 2014 (the "Amended Confidentiality Agreement"), and such  
25 obligations shall survive the Effective Date of this Consent Judgment on the terms and conditions  
26 set forth in the Amended Confidentiality Agreement.



1     **6.     COURT APPROVAL**

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

18     **7.     GOVERNING LAW**

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

1 **8. NOTICES**

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

6 To the Settling Defendant:	To Plaintiff:
7 At the address shown on Exhibit A	Proposition 65 Coordinator
8	The Chanler Group
9	2560 Ninth Street
10	Parker Plaza, Suite 214
	Berkeley, CA 94710-2565

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

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

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

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

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

20 **11. POST EXECUTION ACTIVITIES**

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

1 This provision is a material component of the Consent Judgment and shall be treated as such in the  
2 event of a breach.

3 12. MODIFICATION

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

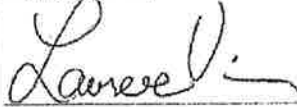
7 13. AUTHORIZATION

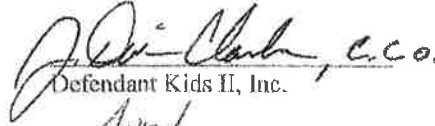
8 The undersigned are authorized to execute this Consent Judgment on behalf of their  
9 respective Parties and have read, understood, and agree to all of the terms and conditions of this  
10 Consent Judgment.

11

12 AGREED TO:

AGREED TO:

13 

14 

15 Plaintiff Laurence Vinocur

Defendant Kids II, Inc.

16 Date: ~~March~~ <sup>April</sup> 11, 2014

16 Date: ~~March~~ <sup>April</sup> 9, 2014

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EXHIBIT A

I. Name of Settling Defendant (Mandatory) Kids II, Inc.

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

Toys "R" Us, Inc., Target Corporation, Blue Blood USA Racing, Inc. dba  
Spike Angel, Burlington Coat Factory, Hivacity, Inc. dba Baby of America,  
Kohl's Department Stores, Nexcom, Owin International Enterprise,  
Personal and Family Readiness Division MCCA, S&S Group, Inc. dba For  
Moms, Santa Barbara Baby Furniture, Target.com, Walmart.com

III. Settling Defendant's Required Settlement Payment: Civil Penalty of \$55,000.00, of which  
\$11,500.00 may be waived pursuant to Section 4.1.1 and \$8,500.00 may be waived pursuant  
to Section 4.1.2.

IV. Payment to The Chanler Group for reimbursement of attorneys' fees and costs:  
\$45,000.

V. Person(s) to receive Notices pursuant to Section 8

Brian J. Bergman

\_\_\_\_\_  
Name Attorney Name

\_\_\_\_\_  
Title Title

Address: Address:

Bergman Dacey Goldsmith  
10880 Wilshire Blvd., Ste. 900  
Los Angeles, CA 90024

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