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7
8 SUPERIOR COURT OF THE STATE OF CALIFORNIA
9 COUNTY OF ALAMEDA - UNLIMITED CIVIL JURISDICTION

10
11 PETER ENGLANDER
12 Plaintiff,
13 v.
14 KIDKRAFT, LP; et al.
15 Defendants.

Case No. RG13691259

**[PROPOSED] CONSENT JUDGMENT AS
TO KIDKRAFT, LP**

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

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1 **1. INTRODUCTION**

2 **1.1. Parties**

3 This Consent Judgment is entered into by and between plaintiff Peter Englander
4 (“Englander”) and defendant KidKraft, LP (“KidKraft”), with Englander and KidKraft collectively
5 referred to as the “Parties.”

6 **1.2. Plaintiff**

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. Defendant**

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

14 **1.4. General Allegations**

15 Englander alleges that KidKraft manufactured, imported, sold and/or distributed for sale in
16 California, products with foam cushioned components containing tris(1,3-dichloro-2-propyl)
17 phosphate (“TDCPP”) and/or tris(2-chloroethyl) phosphate (“TCEP”) without the requisite
18 Proposition 65 health hazard warnings. Englander alleges that TDCPP and TCEP escape from
19 foam padding, leading to human exposures.

20 **1.5. Product Description**

21 The category of products that is covered by this Consent Judgment is padded, upholstered
22 children’s chairs and ottomans containing TDCPP and/or TCEP, including but not limited to the
23 *Bubble Gum Chenille Upholstered Rocker & Ottoman with Slip cover (#103531/18633/39)*
24 (“Products”). Polyurethane foam that is supplied, shaped or manufactured for use as a component
25 of another product, such as upholstered furniture, but which is not itself a finished product, is
26 specifically excluded from the definition of Products.

27 **1.6. Notices of Violation**

28 On February 8, 2013, Englander served KidKraft, Buy Buy Baby, Inc. (“Buy Buy Baby”)

1 and certain requisite public enforcement agencies with a “60-Day Notice of Violation” (“February 8
2 Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on
3 KidKraft’s and Buy Buy Baby’s alleged failure to warn their customers and consumers that their
4 padded, upholstered children’s furniture exposes users in California to TDCPP.

5 On April 19, 2013, Englander served KidKraft, Buy Buy Baby, and certain requisite public
6 enforcement agencies with a “Supplemental 60-Day Notice of Violation” (“April 19 Notice”) that
7 provided the recipients with notice of alleged violations of Proposition 65 based on KidKraft’s and
8 Buy Buy Baby’s alleged failure to warn their customers and consumers that their padded,
9 upholstered children’s ottomans exposes users in California to TDCPP and TCEP.

10 On May 3, 2013, Englander Served KidKraft, Buy Buy Baby, Mei Yuan Adornment of
11 Bedroom (“Mei Yuan”), Shanghai Tayranne Co. Ltd. (“Shanghai Tayranne”), and certain requisite
12 public enforcement agencies with a “Second Supplemental 60-Day Notice of Violation” (“May 3
13 Notice”) that provided the recipients with notice of alleged violations of Proposition 65 based on
14 KidKraft’s Buy Buy Baby’s, Mei Yuan’s, and Shanghai Tayranne’s alleged failure to warn their
15 customers and consumers that their padded, upholstered children’s ottomans expose users in
16 California to TDCPP and TCEP.

17 On June 19, 2013, Englander Served KidKraft, Buy Buy Baby, Mei Yuan, Shanghai
18 Tayranne, and certain requisite public enforcement agencies with a “Third Supplemental 60-Day
19 Notice of Violation” (“June 19 Notice”) that provided the recipients with notice of alleged
20 violations of Proposition 65 based on KidKraft’s Buy Buy Baby’s, Mei Yuan’s, and Shanghai
21 Tayranne’s alleged failure to warn their customers and consumers that their padded, upholstered
22 children’s chairs and ottomans expose users in California to TDCPP and TCEP.

23 Collectively, the February 8 Notice, April 19 Notice, May 3 Notice, and June 19 Notice
24 shall be referred to herein as the “Notices.” To the best of the Parties’ knowledge, no public
25 enforcer has commenced or is diligently prosecuting the allegations set forth in the Notices.

26 **1.7. Complaint**

27 On August 9, 2013, Englander filed a Complaint in the Superior Court in and for the County
28 of Alameda against KidKraft and Does 1 through 150, *Peter Englander v. KidKraft, LP, et al.*, Case

1 No. RG 13-691259, alleging violations of Proposition 65, based in part on the alleged unwarned
2 exposures to TDCPP and TCEP contained in the Products.

3 Upon entry of this Consent Judgment, the Complaint shall be deemed amended *nunc pro*
4 *tunc* to include the violations of Proposition 65 by KidKraft alleged in the June 19 Notice.

5 **1.8. No Admission**

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

14 **1.9. Consent to Jurisdiction**

15 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
16 jurisdiction over KidKraft as to the allegations contained in the Complaint, that venue is proper in
17 the County of Alameda, and that this Court has jurisdiction to enter and enforce the provisions of
18 this Consent Judgment pursuant to Proposition 65 and California Code of Civil Procedure section
19 664.6.

20 **2. DEFINITIONS**

21 **2.1. California Customers**

22 “California Customer” shall mean any customer that KidKraft reasonably understands is
23 located in California, has a California warehouse or distribution center, maintains a retail outlet in
24 California, or has made internet sales into California on or after January 1, 2011.

25 **2.2. Detectable**

26 “Detectable” shall mean containing more than 25 parts per million (“ppm”) (the equivalent
27 of .0025%) each of TDCPP and TCEP in any material, component, or constituent of a subject
28 product, when analyzed by a laboratory accredited by the United States Consumer Product Safety

1 Commission pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies
2 utilized by federal or state agencies to determine the presence, and measure the quantity, of TDCPP
3 and/or TCEP in a solid substance.

4 **2.3. Effective Date**

5 “Effective Date” shall mean December 31, 2013.

6 **2.4. Entry Date**

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

8 **2.5. Listed Chemicals**

9 TDCPP and TCEP collectively shall hereinafter be referred to as the “Listed Chemicals.”

10 **2.6. Reformulated Products**

11 “Reformulated Products” shall mean Products that contain no Detectable amount of TDCPP
12 or TCEP.

13 **2.7. Reformulation Standard**

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

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 After the Effective Date, KidKraft shall not manufacture or import for distribution or sale to
22 California Customers, or cause to be manufactured or imported for distribution or sale to California
23 Customers, any Products that are not Reformulated Products.

24 **3.2. Supplier and Manufacturer Notification/Certification**

25 On or before February 7, 2014, KidKraft shall provide written notice to all of its then-
26 current suppliers or manufacturers of the Products that will be sold or offered for sale after the
27 Effective Date in California, or to California Customers, instructing each such supplier or
28 manufacturer to use reasonable efforts to provide only Reformulated Products for potential sale in

1 California. In addressing the obligation set forth in the preceding sentence, KidKraft shall not
2 employ statements that will encourage a supplier or manufacturer to delay compliance with the
3 Reformulation Standard. KidKraft shall subsequently obtain written certifications, no later than
4 April 1, 2014, from such suppliers or manufacturers, and any newly engaged suppliers or
5 manufacturers, that the Products manufactured by such suppliers or manufacturers are in
6 compliance with the Reformulation Standard. Certifications shall be held by KidKraft for at least
7 two years after their receipt and shall be made available to Englander upon request.

8 **3.3. Products Sold through Websites Not Controlled by KidKraft**

9 No later than fourteen days after the Effective Date, the KidKraft shall send a letter,
10 electronic or otherwise (“Notification Letter”) to each Retailer that KidKraft reasonably
11 understands or believes may, after the Effective Date, offer any of the Products for sale in
12 California. The Notification Letter shall advise the recipient that the Product(s) contain TDCPP
13 and or TCEP, chemicals known to the State of California to cause cancer, and request that the
14 recipient provide a health hazard warning consistent with Section 3.5.2 in conjunction with sales of
15 the Products. The Notification Letter shall request a response from the recipient within twenty days
16 confirming whether warning will be provided. KidKraft shall maintain records of all
17 correspondence or other communications generated pursuant to this Section for two years after the
18 Effective Date and shall promptly produce copies of such records upon Plaintiff’s written request.

19 **3.4. Current Inventory**

20 After the Effective Date, KidKraft will not sell any Products to persons in California that are
21 not Reformulated Products.

22 **3.5. Product Warnings**

23 **3.5.1. Product Labeling**

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

1 specific Product the warning applies, so as to minimize the risk of consumer confusion.

2 A warning provided pursuant to this Consent Judgment shall state:

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

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

13 Notwithstanding the direction of this section, KidKraft may use the following alternative warning
14 language for Products labeled with this language prior to the Effective Date:

15 **WARNING:** This product contains a chemical that
16 is known to the State of California to
17 cause cancer. The chemical is widely
18 used in the furniture industry to
19 enhance fire resistance.

18 3.5.2. Internet Website Warning

19 A warning shall be given in conjunction with the advertisement and sale of the Products by
20 KidKraft to California Customers after the Effective Date, via the internet, which warning shall
21 appear on one or more web pages displayed to a purchaser during any checkout process. The
22 following warning statement shall be used and shall: (a) appear adjacent to or immediately
23 following the display, description, or price of the Product, or (b) appear as a pop-up box. The
24 warning text shall be the same type size or larger than the Product description text:

25 **WARNING:** This product contains TDCPP and/or
26 TCEP, flame retardant chemicals
27 known to the State of California to
28 cause cancer.

1 **3.6. Prohibition against Over-Warning**

2 KidKraft shall not provide, nor require or request that any other party provide, a Warning
3 for any product it knows, or should know, does not contain at least one chemical listed pursuant to
4 Proposition 65.

5 **4. MONETARY PAYMENTS**

6 In settlement of all the claims referred to in this Consent Judgment, KidKraft shall pay the
7 civil penalties set forth in this section and the fees and costs incurred by Englander in bringing and
8 prosecuting this action. Each payment shall be made within two business days of the date it is due
9 and be delivered to the addresses listed in Section 4.5 below. KidKraft shall be liable for payment
10 of interest, at a rate of 10% simple interest, for all amounts due and owing under Section 4 that are
11 not received within two business days of the due date.

12 **4.1. Civil Penalties Pursuant to Health & Safety Code § 25249.7(b)**

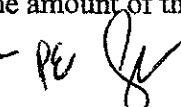
13 Each penalty payment will be allocated in accordance with California Health & Safety Code
14 section 25249.12(c)(1) and (d), with 75% of the funds remitted to the California Office of
15 Environmental Health Hazard Assessment ("OEHHA"), and the remaining 25% of the penalty
16 remitted to "The Chanler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

17 **4.1.1. Initial Civil Penalty**

18 KidKraft shall make an initial civil penalty payment in the amount of \$6,000. The portion
19 of the initial civil penalty due to Englander shall be delivered on or before February 7, 2014; the
20 portion due to OEHHA shall be delivered within fourteen days of the Entry Date.

21 **4.1.2. Second Civil Penalty**

22 On or before February 7, 2014, KidKraft shall make a second civil penalty payment in the
23 amount of \$14,000. The portion of the second civil penalty due to Englander shall be delivered on
24 or before the February 7, 2014; the portion due to OAHHA shall be delivered within fourteen days
25 of the Entry Date. The amount of the second penalty may be waived in full pursuant to Section

26 4.1.4(i) and ~~4.1.4(ii)~~ PE 

27 **4.1.3. Third Civil Penalty**

28 On or before November 30, 2014, KidKraft shall make a third civil penalty payment in the

1 amount of \$14,000. The amount of the third penalty may be ^{waived in full PE} reduced according to any penalty
2 waiver KidKraft is eligible for under Section ^s 4.1.4(ii) and 4.1.4(iii). PEJ

3 **4.1.4. Reductions of Civil Penalty Payment Amounts**

4 KidKraft may reduce the amount of the second and/or third civil penalty payments by
5 providing Englander with certification of certain efforts undertaken to reformulate its Products or
6 limit the ongoing sale of non-reformulated Products in California. The options to provide a written
7 certification in lieu of making a portion of KidKraft's civil penalty payment constitute material
8 terms of this Consent Judgment, and with regard to such terms, time is of the essence.

9 **4.1.4(i) Partial Penalty Waiver for Accelerated Reformulation of Products Sold or Offered for Sale in California**

10 The second civil penalty shall be waived in full, to the extent that KidKraft has agreed that,
11 as of November 1, 2013, and continuing into the future, it has and shall only manufacture or import
12 for distribution or sale to California Customers or cause to be manufactured or imported for
13 distribution or sale to California Customers, Reformulated Products. An officer or other authorized
14 representative of KidKraft, upon exercise of this election, shall provide Englander with a written
15 certification confirming compliance with such conditions, which certification must be received by
16 Englander's counsel on or before February 7, 2014.

17 **4.1.4(ii) Partial Penalty Waiver for Extended Reformulation**

18 A portion of the third civil penalty in the amount of \$8,000 shall be waived, to the extent
19 that KidKraft has agreed that, as of March 31, 2014, and continuing into the future, it shall only
20 manufacture or import for distribution or sale in California or cause to be manufactured or imported
21 for distribution or sale in California, Reformulated Products which also do not contain tris(2,3-
22 dibromopropyl)phosphate ("TDBPP") in a detectable amount of more than 25 parts per million
23 ("ppm") (the equivalent of .0025%) in any material, component, or constituent of a subject product,
24 when analyzed by a laboratory accredited by the U.S. Consumer Product Safety Commission
25 pursuant to EPA testing methodologies 3545 and 8270C, or equivalent methodologies utilized by
26 federal or state agencies to determine the presence, and measure the quantity, of TDBPP in a solid
27 substance. An officer or other authorized representative of KidKraft, upon its exercise of this
28

1 election, shall provide Englander with a written certification confirming compliance with such
2 conditions, which certification must be received by Englander's counsel on or before November 15,
3 2014.

4 **4.1.4(iii) Partial Penalty Waiver for Termination of Distribution to California of**
5 **Unreformulated Inventory**

6 A portion of the third civil penalty in the amount of \$6,000 shall be waived, if an officer or
7 other authorized representative of KidKraft provides Englander with written certification, on or
8 before November 15, 2014, confirming that, as of March 15, 2014, it has and will continue to
9 distribute, offer for sale, or sell in California, or to California Customers, only Products that are
10 Reformulated Products.

11 **4.2. Representation**

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

22 **4.3. Stipulated Penalties for Certain Violations of the Reformulation Standard**

23 If Englander provides notice and appropriate supporting information to KidKraft that levels
24 of a Listed Chemical in excess of the Reformulation Standard have been detected in one or more
25 Products that are labeled or otherwise marked in an identifiable manner as manufactured or
26 imported after a deadline for meeting the Reformulation Standard has arisen under Sections 3.1 or
27 3.2 above, KidKraft may elect to pay a stipulated penalty to relieve any further potential liability
28 under Proposition 65 or sanction under this Consent Judgment as to Products sourced from the

1 supplier or manufacturer in question. The stipulated penalty shall be \$1,500 if the violation level is
2 below 100 ppm and \$3,000 if the violation level is between 100 ppm and 249 ppm, this being
3 applicable for any amount in excess of the Reformulation Standards but under 250 ppm.

4 KidKraft must provide notice and appropriate supporting information relating to the
5 purchase (e.g. supplier or manufacturer name and contact information including representative,
6 purchase order, certification (if any) received from supplier or manufacturer for the exemplar or
7 subcategory of products), test results, and a letter from a company representative or counsel
8 attesting to the information provided, to Englander within thirty calendar days of receiving test
9 results from Englander's counsel.

10 Englander shall be entitled to reimbursement of his expense associated with Englander's
11 election pursuant to this Section in an amount not to exceed \$6,000 regardless of the stipulated
12 penalty level.

13 This Section shall not be applicable where the supplier or manufacturer in question had
14 previously been found by KidKraft to provide unreliable certifications as to meeting the
15 Reformulation Standard in its Products. Notwithstanding the foregoing, a stipulated penalty for a
16 second exceedance by KidKraft's supplier or manufacturer at a level between 100 and 249 ppm
17 shall not be available after July 1, 2015. Any violation levels at or above 250 ppm shall be subject
18 to the full remedies provided pursuant to this Consent Judgment and at law.

19 **4.4. Reimbursement of Fees and Costs**

20 The Parties acknowledge that Englander and his counsel offered to resolve this dispute
21 without reaching terms on the amount of fees and costs to be reimbursed to Englander, thereby
22 leaving this fee reimbursement issue to be resolved after the material terms of the agreement had
23 been settled. Shortly after the other settlement terms had been finalized, KidKraft expressed a
24 desire to resolve the fee and cost issue. KidKraft then agreed to pay Englander and his counsel
25 under general contract principles and the private attorney general doctrine codified at California
26 Code of Civil Procedure section 1021.5 for all work performed through the mutual execution of this
27 agreement, including the fees and costs incurred as a result of investigating, bringing this matter to
28 KidKraft's attention, negotiating a settlement in the public interest, and seeking court approval of

1 the same. KidKraft agreed, upon the Court's approval and entry of this Consent Judgment, to pay
2 Englander's counsel the amount of fees and costs in the amount of \$35,000. KidKraft further
3 agreed to tender, and shall tender, its full required payment under this Section to a trust account at
4 The Chanler Group (checks made payable "In Trust for The Chanler Group") on or before February
5 7, 2014. Such funds shall be released from the trust account on or after the Entry Date.

6 **4.5. Payment Procedures**

7 **4.5.1. Issuance of Payments**

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

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

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

18 For United States Postal Service Delivery:

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

24 For Non-United States Postal Service Delivery:

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

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.

1 **4.5.3. Tax Documentation**

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

8 **5. CLAIMS COVERED AND RELEASED**

9 **5.1. Englander’s Release of Proposition 65 Claims**

10 Englander, acting on his own behalf and in the public interest, releases KidKraft, its parents,
11 subsidiaries, affiliated entities under common ownership, directors, officers, agents employees,
12 attorneys, and each entity to whom KidKraft directly or indirectly distribute or sell Products,
13 including, but not limited, to downstream distributors, wholesalers, customers, retailers,
14 franchisees, cooperative members, and licensees (collectively, “Releasees”), from all claims for
15 violations of Proposition 65 through the Effective Date based on unwarned exposures to TDCPP
16 and TCEP in the Products, as set forth in the Notices. Compliance with the terms of this Consent
17 Judgment constitutes compliance with Proposition 65 with respect to exposures to TDCPP and
18 TCEP from the Products, as set forth in the Notices. The Parties further understand and agree that
19 this Section 5.1 release shall not extend upstream to any entities that manufactured the Products or
20 any component parts thereof, or any distributors or suppliers who sold the Products or any
21 component parts thereof to KidKraft.

22 **5.2. Englander’s Individual Releases of Claims**

23 Englander, in his individual capacity only and *not* in his representative capacity, provides a
24 release herein which shall be effective as a full and final accord and satisfaction, as a bar to all
25 actions, causes of action, obligations, costs, expenses, attorneys’ fees, damages, losses, claims,
26 liabilities, and demands of Englander of any nature, character, or kind, whether known or unknown,
27 suspected or unsuspected, limited to and arising out of alleged or actual exposures to the Listed
28 Chemicals in the Products manufactured, imported, distributed, or sold by KidKraft prior to the

1 Effective Date. The Parties further understand and agree that this Section 5.2 release shall not
2 extend upstream to any entities that manufactured the Products, or any component parts thereof, or
3 any distributors or suppliers who sold the Products, or any component parts thereof, to KidKraft.
4 Nothing in this Section affects Englander's rights to commence or prosecute an action under
5 Proposition 65 against a Releasee that does not involve KidKraft's Products.

6 **5.3. KidKraft's Release of Englander**

7 KidKraft, on behalf of itself, its past and current agents, representatives, attorneys,
8 successors, and assignees, hereby waives any and all claims against Englander and his attorneys and
9 other representatives, for any and all actions taken or statements made (or those that could have
10 been taken or made) by Englander and his attorneys and other representatives, whether in the course
11 of investigating claims or otherwise seeking to enforce Proposition 65 against it in this matter with
12 respect to the Products.

13 **6. COURT APPROVAL**

14 This Consent Judgment is not effective until it is approved and entered by the Court and
15 shall be null and void if, for any reason, it is not approved and entered by the Court within one year
16 after it has been fully executed by all Parties. If the Court does not approve the Consent Judgment,
17 the Parties shall meet and confer as to whether to modify the language or appeal the ruling. If the
18 Parties do not jointly agree on a course of action to take, then the case shall proceed in its normal
19 course on the Court's trial calendar. If the Court's approval is ultimately overturned by an appellate
20 court, the Parties shall meet and confer as to whether to modify the terms of this Consent Judgment.
21 If the Parties do not jointly agree on a course of action to take, then the case shall proceed in its
22 normal course on the Court's trial calendar. In the event that this Consent Judgment is entered by
23 the Court and subsequently overturned by any appellate court, any monies that have been provided
24 to OEHHA, Englander or his counsel pursuant to Section 4, above, shall be refunded within fifteen
25 days of the appellate decision becoming final. If the Court does not approve and enter the Consent
26 Judgment within one year of the Effective Date, any monies that have been provided to OEHHA or
27 held in trust for Englander or his counsel pursuant to Section 4, above, shall be refunded to
28 KidKraft within fifteen days of Englander's receipt of a demand for repayment from KidKraft.

1 **7. GOVERNING LAW**

2 The terms of this Consent Judgment shall be governed by the laws of the State of California.
3 In the event that Proposition 65 is repealed, preempted, or is otherwise rendered inapplicable by
4 reason of law generally, or if any of the provisions of this Consent Judgment are rendered
5 inapplicable or are no longer required as a result of any such repeal or preemption, or rendered
6 inapplicable by reason of law generally as to the Products, then KidKraft may provide written
7 notice to Englander of any asserted change in the law, and shall have no further obligations
8 pursuant to this Consent Judgment with respect to, and to the extent that, the Products are so
9 affected. Nothing in this Consent Judgment shall be interpreted to relieve KidKraft from any
10 obligation to comply with any pertinent state or federal law or regulation.

11 **8. NOTICES**

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

16 To KidKraft:

17 Gretchen Van Tassel
18 KidKraft, LP
19 4630 Olin Road
20 Dallas, TX 75244

To Englander:

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

21 With a copy to:

22 Edward Sangster
23 K&L Gates LLP
24 4 Embarcadero Center, Suite 1200
25 San Francisco, CA 94111-5994

26 Either Party, from time to time, may specify in writing to the other Party a change of address to
27 which all notices and other communications shall be sent.
28

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

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

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

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

8 **11. ADDITIONAL POST EXECUTION ACTIVITIES**

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

16 **12. MODIFICATION**


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

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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
6 AGREED TO:

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9 Plaintiff Peter Englander

10
11 Date: February 3, 2014

AGREED TO:


Defendant KidKraft LP
By: John Walker
Its: CFO

12 Date: February __, 2014
13 January 31, 2014

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